38-33-113. License to sell condominiums and time shares.

The general assembly hereby finds and declares that the licensing of persons to sell condominiums and time shares is a matter of statewide concern.

Source: L. 83: Entire section added, p. 594, § 5, effective May 25.

Cross references: For the licensing of real estate brokers and salespersons, see article 10 of title 12.

ANNOTATION

Law reviews. For comment, "State and Local Regulation of Timesharing in Colorado", see 56 U. Colo. L. Rev. 289 (1985).

ARTICLE 33.3

Colorado Common Interest Ownership Act

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PART 1

GENERAL PROVISIONS

38-33.3-101. Short title.

This article shall be known and may be cited as the "Colorado Common Interest Ownership Act".

Source: L. 91: Entire article added, p. 1701, § 1, effective July 1, 1992.

38-33.3-102. Legislative declaration.

(1) The general assembly hereby finds, determines, and declares, as follows:

(a) That it is in the best interests of the state and its citizens to establish a clear, comprehensive, and uniform framework for the creation and operation of common interest communities;

(b) That the continuation of the economic prosperity of Colorado is dependent upon the strengthening of homeowner associations in common interest communities financially through the setting of budget guidelines, the creation of statutory assessment liens, the granting of six months' lien priority, the facilitation of borrowing, and more certain powers in the association to sue on behalf of the owners and through enhancing the financial stability of associations by increasing the association's powers to collect delinquent assessments, late charges, fines, and enforcement costs;

(c) That it is the policy of this state to give developers flexible development rights with specific obligations within a uniform structure of development of a common interest community that extends through the transition to owner control;

(d) That it is the policy of this state to promote effective and efficient property management through defined operational requirements that preserve flexibility for such homeowner associations;

(e) That it is the policy of this state to promote the availability of funds for financing the development of such homeowner associations by enabling lenders to extend the financial services to a greater market on a safer, more predictable basis because of standardized practices and prudent insurance and risk management obligations.

Source: L. 91: Entire article added, p. 1701, § 1, effective July 1, 1992.

ANNOTATION

There is no support for the proposition that enactment of a legislative scheme governing the operation of homeowners' association thereby transforms such homeowners' association into cities or other governmental entities. Woodmoor Improvement Ass'n v. Brenner, 919 P.2d 928 (Colo. App. 1996).

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:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person: Is a general partner, officer, director, or employee of the declarant; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests of the declarant; controls in any manner the election of a majority of the directors of the declarant; or has contributed more than twenty percent of the capital of the declarant. A person is controlled by a declarant if the declarant: Is a general partner, officer, director, or employee of the person; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests of the person; controls in any manner the election of a majority of the directors of the person; or has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection (1) are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the following interests allocated to each unit:

(a) In a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association;

(b) In a cooperative, the common expense liability and the ownership interest and votes in the association; and

(c) In a planned community, the common expense liability and votes in the association.

(2.5) "Approved for development" means that all or some portion of a particular parcel of real property is zoned or otherwise approved for construction of residential and other improvements and authorized for specified densities by the local land use authority having jurisdiction over such real property and includes any conceptual or final planned unit development approval.

(3) "Association" or "unit owners' association" means a unit owners' association organized under section 38-33.3-301.

(4) "Bylaws" means any instruments, however denominated, which are adopted by the association for the regulation and management of the association, including any amendments to those instruments.

(5) "Common elements" means:

(a) In a condominium or cooperative, all portions of the condominium or cooperative other than the units; and

(b) In a planned community, any real estate within a planned community owned or leased by the association, other than a unit.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 38-33.3-207.

(7) "Common expenses" means expenditures made or liabilities incurred by or on behalf of the association, together with any allocations to reserves.

(8) "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of such person's ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration. Ownership of a unit does not include holding a leasehold interest in a unit of less than forty years, including renewal options. The period of the leasehold interest, including renewal options, is measured from the date the initial term commences.

(9) "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(10) "Cooperative" means a common interest community in which the real property is owned by an association, each member of which is entitled by virtue of such member's ownership interest in the association to exclusive possession of a unit.

(11) "Dealer" means a person in the business of selling units for such person's own account.

(12) "Declarant" means any person or group of persons acting in concert who:

(a) As part of a common promotional plan, offers to dispose of to a purchaser such declarant's interest in a unit not previously disposed of to a purchaser; or

(b) Reserves or succeeds to any special declarant right.

(13) "Declaration" means any recorded instruments however denominated, that create a common interest community, including any amendments to those instruments and also including, but not limited to, plats and maps.

(14) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to:

(a) Add real estate to a common interest community;

(b) Create units, common elements, or limited common elements within a common interest community;

(c) Subdivide units or convert units into common elements; or

(d) Withdraw real estate from a common interest community.

(15) "Dispose" or "disposition" means a voluntary transfer of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.

(16) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

(16.5) "Horizontal boundary" means a plane of elevation relative to a described bench mark that defines either a lower or an upper dimension of a unit such that the real estate respectively below or above the defined plane is not a part of the unit.

(17) "Identifying number" means a symbol or address that identifies only one unit in a common interest community.

(17.5) "Large planned community" means a planned community that meets the criteria set forth in section 38-33.3-116.3 (1).

(18) "Leasehold common interest community" means a common interest community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the common interest community or reduce its size.

(19) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of section 38-33.3-202 (1)(b) or (1)(d) for the exclusive use of one or more units but fewer than all of the units.

(19.5) "Map" means that part of a declaration that depicts all or any portion of a common interest community in three dimensions, is executed by a person that is authorized by this title to execute a declaration relating to the common interest community, and is recorded in the real estate records in every county in which any portion of the common interest community is located. A map is required for a common interest community with units having a horizontal boundary. A map and a plat may be combined in one instrument.

(20) "Master association" means an organization that is authorized to exercise some or all of the powers of one or more associations on behalf of one or more common interest communities or for the benefit of the unit owners of one or more common interest communities.

(21) "Person" means a natural person, a corporation, a partnership, an association, a trust, or any other entity or any combination thereof.

(21.5) "Phased community" means a common interest community in which the declarant retains development rights.

(22) "Planned community" means a common interest community that is not a condominium or cooperative. A condominium or cooperative may be part of a planned community.

(22.5) "Plat" means that part of a declaration that is a land survey plat as set forth in section 38-51-106, depicts all or any portion of a common interest community in two dimensions, is executed by a person that is authorized by this title to execute a declaration relating to the common interest community, and is recorded in the real estate records in every county in which any portion of the common interest community is located. A plat and a map may be combined in one instrument.

(23) "Proprietary lease" means an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative.

(24) "Purchaser" means a person, other than a declarant or a dealer, who by means of a transfer acquires a legal or equitable interest in a unit, other than:

(a) A leasehold interest in a unit of less than forty years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or

(b) A security interest.

(25) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without horizontal boundaries and spaces that may be filled with air or water.

(26) "Residential use" means use for dwelling or recreational purposes but does not include spaces or units primarily used for commercial income from, or service to, the public.

(27) "Rules and regulations" means any instruments, however denominated, which are adopted by the association for the regulation and management of the common interest community, including any amendment to those instruments.

(28) "Security interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to perform the following acts as specified in parts 2 and 3 of this article: To complete improvements indicated on plats and maps filed with the declaration; to exercise any development right; to

maintain sales offices, management offices, signs advertising the common interest community, and models; to use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community; to make the common interest community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the association or any executive board member during any period of declarant control.

(30) "Unit" means a physical portion of the common interest community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the declaration. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

(31) "Unit owner" means the declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease, the expiration or termination of which will remove the unit from the common interest community but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration until that unit is conveyed to another person; in a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated pursuant to section 38-33.3-207 until that unit has been conveyed to another person, who may or may not be a declarant under this article.

(32) "Vertical boundary" means the defined limit of a unit that is not a horizontal boundary of that unit.

(33) "Xeriscape" means the combined application of the seven principles of landscape planning and design, soil analysis and improvement, hydro zoning of plants, use of practical turf areas, uses of mulches, irrigation efficiency, and appropriate maintenance under section 38-35.7-107 (1)(a)(III)(A).

Source: L. 91: Entire article added, p. 1702, § 1, effective July 1, 1992. **L. 93:** IP, (8), and (25) amended and (16.5), (19.5), (22.5), and (32) added, p. 642, § 1, effective April 30. **L. 94:** (17.5) added, p. 2845, § 1, effective July 1; (22.5) amended, p. 1509, § 44, effective July 1. **L. 95:** (2.5) added, p. 236, § 1, effective July 1. **L. 97:** (22.5) amended, p. 151, § 2, effective March 28. **L. 98:** (20) amended, p. 477, § 1, effective July 1. **L. 2006:** (21.5) added, p. 1215, § 1, effective May 26. **L. 2013:** (33) added, (SB 13-183), ch. 187, p. 757, § 2, effective May 10.

ANNOTATION

Law reviews. For article, "Terminating Common Interest Communities with Horizontal Boundaries under CCIOA", see 51 Colo. Law. 40 (June 2022).

Subdivision can be a common interest community as defined in subsection (8) even if it does not include common property. Where subdivision covenants required homeowners to pay mandatory assessments for maintenance or improvement and the homeowners' association was responsible for maintenance and improvement of the subdivision and enforcement of covenants, the absence of common property in the subdivision did not preclude the subdivision from being a common interest community because the scope of the phrase "other real estate" in subsection (8) is not restricted to common property. Hiwan Homeowners Ass'n v. Knotts, 215 P.3d 1271 (Colo. App. 2009).

Based upon definition of "declaration" under subsection (13), in the absence of covenant imposing mandatory dues, homeowners association has the implied power to collect assessments from homeowners to pay for the maintenance of the common areas of the subdivision. Here, the "declarations" for the homeowners association of the subdivision in effect at the time respondent lot owner purchased his lot incorporated all documents recorded up to that date. At the time respondent lot owner purchased his lot, the declarations made clear that the homeowners association had the power to impose annual membership or use fees on lot owners. These declarations were sufficient to create a common interest community by implication, with the concomitant power to impose mandatory dues on lot owners to pay for the maintenance of common areas of the subdivision. The respondent lot owner, therefore, has an implied duty to pay his proportionate share of the cost of maintaining and operating the common area. Evergreen Highlands Ass'n v. West, 73 P.3d 1 (Colo. 2003).

Based upon definition of "declaration" in subsection (13), a plat can be part of a declaration. Giguere v. SJS Family Enters., 155 P.3d 462 (Colo. App. 2006).

"Subsequent filings" language used in declaration referenced development rights. Lots not in existence at the time declaration was recorded had yet to be created, and, as such, they represent units that could be created in the future and fall under the definition of "development rights". Miller v. Curry, 203 P.3d 626 (Colo. App. 2009).

38-33.3-104. Variation by agreement.

Except as expressly provided in this article, provisions of this article may not be varied by agreement, and rights conferred by this article may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this article or the declaration.

Source: L. 91: Entire article added, p. 1707, § 1, effective July 1, 1992.

ANNOTATION

Requiring a declarant's consent to amend a declaration does not violate this section because this section does not permit the declarant to control unit owners' votes. Here, the declaration could not be amended without a vote of at least sixty-seven percent of the unit owners. The declarant consent provision did not alter this requirement. Vallagio at Inverness v. Metro. Homes, 2015 COA 65, 412 P.3d 709, aff'd, 2017 CO 69, 395 P.3d 788.

38-33.3-105. Separate titles and taxation.

(1) In a cooperative, unless the declaration provides that a unit owner's interest in a unit and its allocated interests is personal property, that interest is real estate for all purposes.

(2) In a condominium or planned community with common elements, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate and must be separately assessed and taxed. The valuation of the common elements shall be assessed proportionately to each unit, in the case of a condominium in accordance with such unit's allocated interests in the common elements, and in the case of a planned community in accordance with such unit's allocated common expense liability, set forth in the declaration, and the common elements shall not be separately taxed or assessed. Upon the filing for recording of a declaration for a condominium or planned community with common elements, the declarant shall deliver a copy of such filing to the assessor of each county in which such declaration was filed.

(3) In a planned community without common elements, the real estate comprising such planned community may be taxed and assessed in any manner provided by law.

Source: L. 91: Entire article added, p. 1707, § 1, effective July 1, 1992. **L. 93:** (1) and (2) amended, p. 643, § 2, effective April 30.

38-33.3-106. Applicability of local ordinances, regulations, and building codes.

(1) A building code may not impose any requirement upon any structure in a common interest community which it would not impose upon a physically identical development under a

different form of ownership; except that a minimum one hour fire wall may be required between units.

(2) In condominiums and cooperatives, no zoning, subdivision, or other real estate use law, ordinance, or regulation may prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative which it would not impose upon a physically identical development under a different form of ownership.

Source: L. 91: Entire article added, p. 1707, § 1, effective July 1, 1992.

ANNOTATION

Town's actions in attempting to enforce provision of 1987 municipal ordinance imposing restrictions on units converted to condominiums is, of necessity, an event and circumstance occurring on or after July 1, 1992, triggering application of the anti-discrimination clause under subsection (2). Further, subsection (2) retroactively applies. The plain meaning of an "event and circumstance" within the meaning of § 38-33.3-117 (1) unambiguously includes the court's actions in seeking to enforce the 1987 ordinance. Town of Vail v. Vill. Inn Plaza-Phase V, 2021 COA 108, 498 P.3d 1123.

Because municipal ordinance singles out condominiums, it is facially apparent that it discriminates against the condominium form of ownership in violation of the anti-discrimination provision in subsection (2) as a matter of law. The ordinance imposes the restriction on the residential units at issue only if the units would be condominiumized. If the units are not condominiunized, the restrictions do not apply. Because the language of the ordinance applies only to condominiums it is, on its face, discriminatory. Town of Vail v. Vill. Inn Plaza-Phase V, 2021 COA 108, 498 P.3d 1123.

38-33.3-106.5. Prohibitions contrary to public policy - patriotic, political, or religious expression - public rights-of-way - fire prevention - renewable energy generation devices - affordable housing - drought prevention measures - child care - fire-hardened building materials - operation of businesses - 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 a flag on a unit owner's property, in a window of the unit, or on a balcony adjoining the unit. The association shall not prohibit or regulate the display of flags on the basis of their subject matter, message, or content; except that the association may prohibit flags

bearing commercial messages. The association may adopt reasonable, content-neutral rules to regulate the number, location, and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole.

(b) Repealed.

(c) The display of a sign by the owner or occupant of a unit on property within the boundaries of the unit or in a window of the unit. The association shall not prohibit or regulate the display of window signs or yard signs on the basis of their subject matter, message, or content; except that the association may prohibit signs bearing commercial messages. The association may establish reasonable, content-neutral sign regulations based on the number, placement, or size of the signs or on other objective factors.

(c.5) (I) The display of a religious item or symbol on the entry door or entry door frame of a unit; except that an association may prohibit the display or affixing of an item or symbol to the extent that it:

(A) Threatens public health or safety;

(B) Hinders the opening or closing of an entry door;

(C) Violates federal or state law or a municipal ordinance;

(D) Contains graphics, language, or any display that is obscene or otherwise illegal; or

(E) Individually or in combination with other religious items or symbols, covers an area greater than thirty-six square inches.

(II) If an association is performing maintenance, repair, or replacement of an entry door or door frame that serves a unit owner's separate interest, the unit owner may be required to remove a religious item or symbol during the time the work is being performed. After completion of the association's work, the unit owner may again display or affix the religious item or symbol. The association shall provide individual notice to the unit owner regarding the temporary removal of the religious item or symbol.

(III) As used in this subsection (1)(c.5), "religious item or symbol" means an item or symbol displayed because of a sincerely held religious belief.

(d) The parking of a motor vehicle by the occupant of a unit 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 such occupant's residence as a condition of the occupant's employment and all of the following criteria are met:

(I) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;

(II) The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire fighting, law enforcement, ambulance, or emergency medical services;

(III) The vehicle bears an official emblem or other visible designation of the emergency service provider; and

(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, driveways, and guest parking spaces within the common interest community.

(d.5) (I) The use of a public right-of-way in accordance with a local government's ordinance, resolution, rule, franchise, license, or charter provision regarding use of the public right-of-way. Additionally, the association shall not require that a public right-of-way be used in a certain manner.

(II) As used in this subsection (1)(d.5), "local government" means a statutory or home rule county, municipality, or city and county.

(e) The removal by a unit owner of trees, shrubs, or other vegetation to create defensible space around a dwelling for fire mitigation purposes, so long as such removal complies with a written defensible space plan created for the property by the Colorado state forest service, an individual or company certified by a local governmental entity to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the unit is located, and is no more extensive than necessary to comply with such plan. The plan shall be registered with the association before the commencement of work. The association may require changes to the plan if the association obtains the consent of the person, official, or agency that originally created the plan. The work shall comply with applicable association standards regarding slash removal, stump height, revegetation, and contractor regulations.

(f) (Deleted by amendment, L. 2006, p. 1215, § 2, effective May 26, 2006.)

(g) Reasonable modifications to a unit or to common elements as necessary to afford a person with disabilities full use and enjoyment of the unit in accordance with the federal "Fair Housing Act of 1968", 42 U.S.C. sec. 3604 (f)(3)(A);

(h) (I) The right of a unit owner, public or private, to restrict or specify by deed, covenant, or other document:

(A) The permissible sale price, rental rate, or lease rate of the unit; or

(B) Occupancy or other requirements designed to promote affordable or workforce housing as such terms may be defined by the local housing authority.

(II) (A) Notwithstanding any other provision of law, the provisions of this subsection (1)(h) shall only apply to a county the population of which is less than one hundred thousand persons

and that contains a ski lift licensed by the passenger tramway safety board created in section 12-150-104 (1).

(B) The provisions of this paragraph (h) shall not apply to a declarant-controlled community.

(III) Nothing in subparagraph (I) of this paragraph (h) shall be construed to prohibit the future owner of a unit against which a restriction or specification described in such subparagraph has been placed from lifting such restriction or specification on such unit as long as any unit so released is replaced by another unit in the same common interest community on which the restriction or specification applies and the unit subject to the restriction or specification is reasonably equivalent to the unit being released in the determination of the beneficiary of the restriction or specification.

(IV) Except as otherwise provided in the declaration of the common interest community, any unit subject to the provisions of this paragraph (h) shall only be occupied by the owner of the unit.

(i) (I) (A) The use of xeriscape, nonvegetative turf grass, or drought-tolerant vegetative landscapes to provide ground covering to property for which a unit owner is responsible, including a limited common element or property owned by the unit owner. Associations may adopt and enforce design or aesthetic guidelines or rules that apply to nonvegetative turf grass and drought-tolerant vegetative landscapes or regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on a unit owner's property or on a limited common element or other property for which the unit owner is responsible. An association may restrict the installation of nonvegetative turf grass to rear yard locations only. This subsection (1)(i)(I)(A), as amended by Senate Bill 23-178, enacted in 2023, applies only to a unit that is a single-family home that shares one or more walls with another unit and does not apply to a unit that is a detached single-family home.

(B) This subsection (1)(i), as amended by House Bill 21-1229, enacted in 2021, does not apply to an association that includes time share units, as defined in section 38-33-110 (7).

(II) This paragraph (i) does not supersede any subdivision regulation of a county, city and county, or other municipality.

(i.5) (I) The use of xeriscape, nonvegetative turf grass, or drought-tolerant or nonvegetative landscapes to provide ground covering to property for which a unit owner is responsible, including a limited common element or property owned by the unit owner and any right-of-way or tree lawn that is the unit owner's responsibility to maintain. Associations may adopt and enforce design or aesthetic guidelines or rules that apply to drought-tolerant vegetative or nonvegetative landscapes or to vegetable gardens or that regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on property that is subject to the guidelines or rules; except that the guidelines or rules must:

(A) Not prohibit the use of nonvegetative turf grass in the backyard of a unit owner's property;

(B) Not unreasonably require the use of hardscape on more than twenty percent of the landscaping area of a unit owner's property;

(C) Allow a unit owner an option that consists of at least eighty percent drought-tolerant plantings; and

(D) Not prohibit vegetable gardens in the front, back, or side yard of a unit owner's property. As used in this subsection (1)(i.5), "vegetable garden" means a plot of ground or an elevated soil bed in which pollinator plants, flowers, or vegetables or herbs, fruits, leafy greens, or other edible plants are cultivated.

(II) For the purposes of this subsection (1)(i.5), each association shall select at least three preplanned water-wise garden designs that are preapproved for installation in front yards within the common interest community. To be preapproved, a garden design must adhere to the principles of water-wise landscaping, as defined in section 37-60-135 (2)(l), which emphasize drought-tolerant and native plants, or be part of a water conservation program operated by a local water provider. Each garden design may be selected from the Colorado state university extension Plant Select organization's "downloadable designs" list or from a municipality, utility, or other entity that creates such garden designs. An association shall consider a unit owner's use of one of the garden designs selected by the association to be preapproved as complying with the association's aesthetic guidelines and shall allow a unit owner to use reasonable substitute plants when a plant in a design isn't available. Each association shall post on its public website, if any, information concerning preapprovals of garden designs.

(III) Except as described in subsection (1)(i.5)(IV) of this section, if an association knowingly violates this subsection (1)(i.5), a unit owner who is affected by the violation may bring a civil action to restrain further violation and to recover up to a maximum of five hundred dollars or the unit owner's actual damages, whichever is greater.

(IV) Before a unit owner commences a civil action as described in subsection (1)(i.5)(III) of this section, the unit owner shall notify the association in writing of the violation and allow the association forty-five days after receipt of the notice to cure the violation.

(V) Nothing in this subsection (1)(i.5) shall be construed to prohibit or restrict the authority of associations to:

(A) Adopt bona fide safety requirements consistent with applicable landscape codes or recognized safety standards for the protection of persons and property;

(B) Prohibit or restrict changes that interfere with the establishment and maintenance of fire buffers or defensible spaces; or

(C) Prohibit or restrict changes to existing grading, drainage, or other structural landscape elements necessary for the protection of persons and property.

(VI) Notwithstanding any provision of this section to the contrary, this subsection (1)(i.5) applies only to a unit that is a single-family detached home and does not apply to:

(A) A unit that is a single-family attached home that shares one or more walls with another unit; or

(B) A condominium.

(j) (I) The use of a rain barrel, as defined in section 37-96.5-102 (1), C.R.S., to collect precipitation from a residential rooftop in accordance with section 37-96.5-103, C.R.S.

(II) This paragraph (j) does not confer upon a resident of a common interest community the right to place a rain barrel on property or to connect a rain barrel to any property that is:

(A) Leased, except with permission of the lessor;

(B) A common element or a limited common element of a common interest community;

(C) Maintained by the unit owners' association for a common interest community; or

(D) Attached to one or more other units, except with permission of the owners of the other units.

(III) A common interest community may impose reasonable aesthetic requirements that govern the placement or external appearance of a rain barrel.

(k) (I) The operation of a family child care home, as defined in section 26.5-5-303, that is licensed pursuant to part 3 of article 5 of title 26.5.

(II) This subsection (1)(k) does not supersede any of the association's regulations concerning architectural control, parking, landscaping, noise, or other matters not specific to the operation of a business per se. The association shall make reasonable accommodation for fencing requirements applicable to licensed family child care homes.

(III) This subsection (1)(k) does not apply to a community qualified as housing for older persons under the federal "Housing for Older Persons Act of 1995", as amended, Pub.L. 104-76.

(IV) The association may require the owner or operator of a family child care home located in the common interest community to carry liability insurance, at reasonable levels determined by the association's executive board, providing coverage for any aspect of the operation of the family child care home for personal injury, death, damage to personal property, and damage to real property that occurs in or on the common elements, in the unit where the family child care home is located, or in any other unit located in the common interest community. The association shall be named as an additional insured on the liability insurance the family child care home is

required to carry, and such insurance must be primary to any insurance the association is required to carry under the terms of the declaration.

(l) (I) The operation of a home-based business at a unit by the unit owner or a resident of the unit with the unit owner's permission.

(II) The operation of a home-based business in a common interest community must comply with, and an association may adopt and enforce, any reasonable and applicable rules and regulations governing architectural control, parking, landscaping, noise, nuisance, or other matters concerning the operation of a home-based business.

(III) The operation of a home-based business in a common interest community must comply with any reasonable and applicable noise or nuisance ordinances or resolutions of the municipality or county where the common interest community is located.

(IV) As used in this subsection (1)(l), unless the context otherwise requires, "home-based business" means a business for which the main office is located at, or the business operations primarily occur at, a unit.

(1.5) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not effectively prohibit renewable energy generation devices, as defined in section 38-30-168.

(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.

(3) (a) Except as provided in subsection (3)(c) of this section, any provision in the declaration, bylaws, or rules and regulations of an association on March 12, 2024, that prohibits the installation, use, or maintenance of fire-hardened building materials on a unit owner's property is void and unenforceable.

(b) On and after March 12, 2024, except as provided in subsection (3)(c) of this section, an association shall not:

(I) Prohibit the installation, use, or maintenance of fire-hardened building materials on a unit owner's property; or

(II) Adopt any provision in the declaration, bylaws, or rules and regulations of the association that prohibits the installation, use, or maintenance of fire-hardened building materials on a unit owner's property.

(c) An association may develop standards that impose reasonable restrictions on the design, dimensions, placement, or external appearance of fire-hardened building materials used for fencing so long as the standards do not:

(I) Increase the cost of the fencing by more than ten percent compared to other fire-hardened building materials used for fencing; or

(II) Require a period of review and approval that exceeds sixty days after the date on which the application for review is filed. If an application for installation of fire-hardened building materials for fencing is not denied or returned for modifications within sixty days after the application is filed, the application is deemed approved. The review process must be transparent and the basis for denial of an application must be described in reasonable detail and in writing. Denial of an application must not be arbitrary or capricious.

(d) Nothing in this subsection (3):

(I) Prohibits or restricts a unit owners' association from adopting bona fide safety requirements that are consistent with applicable building codes or nationally recognized safety standards; or

(II) Confers upon a property owner the right to construct or place fire-hardened building materials on property that is:

(A) Owned by another person;

(B) Leased, except with permission of the lessor; or

(C) A limited common element or general common element of a common interest community.

(e) As used in this subsection (3):

(I) "Fire-hardened building materials" means materials that meet:

(A) The criteria of ignition-resistant construction set forth in sections 504 to 506 of the most recent version of the International Wildland-Urban Interface Code;

(B) The criteria for construction in wildland areas set forth in the most recent version of the NFPA standard 1140, "Standard for Wildland Fire Protection", and the criteria for reducing structure ignition hazards from wildland fire set forth in the most recent version of the NFPA standard 1144, "Reducing Structure Ignitions from Wildland Fire"; or

(C) The requirements for a wildfire-prepared home established by the IBHS.

(II) "IBHS" means the Insurance Institute for Business and Home Safety or its successor organization.

(III) "NFPA" means the National Fire Protection Association or its successor organization.

(4) (a) In a subject jurisdiction or an accessory dwelling unit supportive jurisdiction, no provision of a declaration, bylaw, or rule of an association that is adopted on or after May 13, 2024, may restrict the creation of an accessory dwelling unit as an accessory use to any single-

unit detached dwelling in any way that is prohibited by section 29-35-403, and any provision of a declaration, bylaw, or rule that includes such a restriction is void as a matter of public policy.

(b) In a subject jurisdiction or an accessory dwelling unit supportive jurisdiction, no provision of a declaration, bylaw, or rule of an association that is adopted before May 13, 2024, may restrict the creation of an accessory dwelling unit as an accessory use to any single-unit detached dwelling in any way that is prohibited by section 29-35-403, and any provision of a declaration, bylaw, or rule that includes such a restriction is void as a matter of public policy.

(c) Subsections (4)(a) and (4)(b) of this section do not apply to reasonable restrictions on accessory dwelling units. As used in this subsection (4)(c), "reasonable restriction" means a substantive condition or requirement that does not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct, an accessory dwelling unit consistent with part 4 of article 35 of title 29.

(d) As used in this subsection (4), unless the context otherwise requires:

(I) "Accessory dwelling unit" has the same meaning as set forth in section 29-35-402 (2).

(II) "Accessory dwelling unit supportive jurisdiction" has the same meaning as set forth in section 29-35-402 (3).

(III) "Subject jurisdiction" has the same meaning as set forth in section 29-35-402 (21).

(5) (a) In a transit center or neighborhood center, an association shall not adopt a provision of a declaration, bylaw, or rule on or after May 13, 2024, that restricts the development of housing more than the local law that applies within the transit center or neighborhood center, and any provision of a declaration, bylaw, or rule that includes such a restriction is void as a matter of public policy.

(b) In a transit center or neighborhood center, no provision of a declaration, bylaw, or rule of an association that is adopted before May 13, 2024, may restrict the development of housing more than the local law that applies within the transit center or neighborhood center, and any provision of a declaration, bylaw, or rule that includes such a restriction is void as a matter of public policy.

(c) As used in this subsection (5), unless the context otherwise requires:

(I) "Local law" has the same meaning as set forth in section 29-35-103 (12).

(II) "Neighborhood center" has the same meaning as set forth in section 29-35-202 (5).

(III) "Transit center" has the same meaning as set forth in section 29-35-202 (9).

(6) (a) An association shall not prohibit or restrict the construction of accessory dwelling units or middle housing if the zoning laws of the local jurisdiction would otherwise allow such uses on a property. This subsection (6)(a) applies only to any declaration recorded on or after

July 1, 2024, or in any bylaws or rules and regulations of the association adopted or amended on or after July 1, 2024, unless the declaration, bylaws, or rules and regulations contained such a restriction as of May 30, 2024.

(b) As used in this subsection (6), unless the context otherwise requires:

(I) "Accessory dwelling unit" means an internal, attached, or detached dwelling unit that is located on the same lot as a proposed or existing primary residence.

(II) "Middle housing" means a residential structure or structures that include between two and four separate dwelling units in a structure, a townhome building, or a cottage cluster of up to four units.

Source: L. 2005: Entire section added, p. 1373, § 2, effective June 6. **L. 2006:** (1)(a), (1)(b), (1)(c), IP(1)(d), (1)(d)(II), (1)(d)(IV), and (1)(f) amended and (2) added, p. 1215, § 2, effective May 26. **L. 2008:** (1)(g) added, p. 556, § 1, effective July 1; (1.5) added, p. 620, § 3, effective August 5. **L. 2009:** (1)(h) added, (HB 09-1220), ch. 166, p. 732, § 1, effective August 5. **L. 2013:** (1)(i) added, (SB 13-183), ch. 187, p. 757, § 3, effective May 10. **L. 2016:** (1)(j) added, (HB 16-1005), ch. 161, p. 511, § 3, effective August 10. **L. 2019:** (1)(i)(I) amended, (HB 19-1050), ch. 25, p. 84, § 1, effective March 7; (1)(h)(II)(A) amended, (HB 19-1172), ch. 136, p. 1723, § 233, effective October 1. **L. 2020:** (1)(c.5) added, (HB 20-1200), ch. 188, p. 861, § 3, effective June 30; (1)(k) added, (SB 20-126), ch. 250, p. 1222, § 1, effective September 14. **L. 2021:** (1)(a) and (1)(c) amended and (1)(b) repealed, (SB 21-1310), ch. 415, p. 2766, § 1, effective September 7; (1)(i)(I) amended, (HB 21-1229), ch. 409, p. 2708, § 3, effective September 7. **L. 2022:** (1)(k)(I) amended, (HB 22-1295), ch. 123, p. 865, § 123, effective July 1; (1)(d.5) added, (HB 22-1139), ch. 156, p. 985, § 1, effective August 10. **L. 2023:** (1)(i)(I)(A) amended and (1)(i.5) added, (SB 23-178), ch. 207, p. 1072, § 1, effective August 7. **L. 2024:** (3) added, (HB 24-1091), ch. 24, p. 68, § 2, effective March 12; (4) added, (HB 24-1152), ch. 167, p. 832, § 6, effective May 13; (5) added, (HB 24-1313), ch. 168, p. 868, § 4, effective May 13; (6) added, (SB 24-174), ch. 290, p. 1974, § 4, effective May 30; (1)(l) added, (SB 24-134), ch. 107, p. 334, § 1, effective August 7.

ANNOTATION

Law reviews. For article, "'Hang 'em High': Affordable Housing Covenants in Colorado (Part I)", see 48 Colo. Law. 45 (July 2019). For article, "New ADU and Occupancy Limit Laws in Colorado", see 54 Colo. Law. 32 (July 2025).

38-33.3-106.7. Unreasonable restrictions on energy efficiency measures - definitions.

(1) (a) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not effectively prohibit the installation or use of an energy efficiency measure.

(b) As used in this section, "energy efficiency measure" means a device or structure that reduces the amount of energy derived from fossil fuels that is consumed by a residence or business located on the real property. "Energy efficiency measure" is further limited to include only the following types of devices or structures:

(I) An awning, shutter, trellis, ramada, or other shade structure that is marketed for the purpose of reducing energy consumption;

(II) A garage or attic fan and any associated vents or louvers;

(III) An evaporative cooler;

(IV) An energy-efficient outdoor lighting device, including without limitation a light fixture containing a coiled or straight fluorescent light bulb, and any solar recharging panel, motion detector, or other equipment connected to the lighting device;

(V) A retractable clothesline;

(VI) A heat pump system, as defined in section 39-26-732 (2)(c); and

(VII) On and after January 1, 2027, a portable-scale solar generation device, as defined in section 40-2-140 (1)(e).

(2) Subsection (1) of this section shall not apply to:

(a) Reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an energy efficiency measure. In creating reasonable aesthetic provisions, common interest communities shall consider:

(I) The impact on the purchase price and operating costs of the energy efficiency measure;

(II) The impact on the performance of the energy efficiency measure; and

(III) The criteria contained in the governing documents of the common interest community.

(b) Bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property.

(3) This section shall not be construed to confer upon any property owner the right to place an energy efficiency measure on property that is:

(a) Owned by another person;

(b) Leased, except with permission of the lessor;

(c) Collateral for a commercial loan, except with permission of the secured party; or

(d) A limited common element or general common element of a common interest community.

Source: L. 2008: Entire section added, p. 618, § 2, effective August 5. **L. 2021:** (1)(b)(IV) and (1)(b)(V) amended and (1)(b)(VI) added, (SB 21-246), ch. 283, p. 1675, § 2, effective September 7. **L. 2023:** (1)(b)(VI) amended, (SB 23-016), ch. 165, p. 740, § 11, effective August 7. **L. 2026:** (1)(b)(V) and (1)(b)(VI) amended and (1)(b)(VII) added, (HB 26-1007), ch. 127, p. 556, § 5, effective August 12.

Cross references: For the legislative declaration in SB 21-246, see section 1 of chapter 283, Session Laws of Colorado 2021. For the legislative declaration in HB 26-1007, see section 1 of chapter 127, Session Laws of Colorado 2026.

38-33.3-106.8. Unreasonable restrictions on electric vehicle charging systems and electric vehicle parking - legislative declaration - definitions.

(1) The general assembly finds, determines, and declares that:

(a) The widespread use of plug-in electric vehicles can dramatically improve energy efficiency and air quality for all Coloradans and should be encouraged wherever possible;

(b) Most homes in Colorado, including the vast majority of new homes, are in common interest communities;

(c) The primary purpose of this section is to ensure that common interest communities provide their residents with at least a meaningful opportunity to take advantage of the availability of plug-in electric vehicles rather than create artificial restrictions on the adoption of this promising technology; and

(d) The general assembly encourages common interest communities not only to allow electric vehicle charging stations and the parking of electric vehicles in accordance with this section, but also to apply for grants from the electric vehicle grant fund created in section 24-38.5-103 or otherwise fund the installation of charging stations on common property as an amenity for residents and guests.

(2) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, and except as provided in subsection (3) or (3.5) of this section, an association shall not:

(a) Prohibit a unit owner from using, or installing at the unit owner's expense for the unit owner's own use, a level 1 or level 2 electric vehicle charging system on or in:

(I) A unit;

(II) An assigned or deeded parking space that is part of or assigned to a unit; or

(III) A parking space that is accessible to both the unit owner and other unit owners;

(b) Assess or charge a unit owner any fee for the placement or use of an electric vehicle charging system on or in the unit owner's unit; except that the association may require reimbursement for the actual cost of electricity provided by the association that was used by the charging system or, alternatively, may charge a reasonable fee for access. If the charging system is part of a network for which a network fee is charged, the association's reimbursement may include the amount of the network fee. Nothing in this section requires an association to impose upon a unit owner any fee or charge other than the regular assessments specified in the declaration, bylaws, or rules and regulations of the association.

(c) Restrict parking based on a vehicle being a plug-in hybrid vehicle or plug-in electric vehicle.

(3) Subsection (2) of this section does not apply to:

(a) Bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property;

(b) A requirement that the charging system be registered with the association within thirty days after installation; or

(c) Reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an electric vehicle charging system.

(3.5) This section does not apply to a unit, or the owner thereof, if the unit is a time share unit, as defined in section 38-33-110 (7).

(4) An association shall consent to a unit owner's placement and use of an electric vehicle charging system on a limited common element parking space, carport, or garage owned by the unit owner or otherwise assigned to the owner in the declaration or other recorded document if:

(a) Notwithstanding any existing ban on electric vehicle charging systems, the system otherwise complies with the declaration, bylaws, and rules and regulations of the association; and

(b) The unit owner agrees in writing to:

(I) Comply with the association's design specifications for the installation of the system;

(II) Engage the services of a duly licensed and registered electrical contractor familiar with the installation and code requirements of an electric vehicle charging system;

(III) Bear the expense of installation, including costs to restore any common elements disturbed in the process of installing the system; and

(IV) (A) Provide, within the time specified in sub-subparagraph (B) of this subparagraph (IV), a certificate of insurance naming the association as an additional insured on the homeowner's insurance policy for any claim related to the installation, maintenance, or use of the system or, if the system is located on a common element, reimbursement to the association for the actual cost of any increased insurance premium amount attributable to the system, notwithstanding any provision to the contrary in the association's declaration, bylaws, or rules and regulations.

(B) A certificate of insurance under sub-subparagraph (A) of this subparagraph (IV) must be provided within fourteen days after the unit owner receives the association's consent for the installation. Reimbursement for an increased insurance premium amount under sub-subparagraph (A) of this subparagraph (IV) must be provided within fourteen days after the unit owner receives the association's invoice for the amount attributable to the system.

(5) If the association consents to a unit owner's installation of an electric vehicle charging system on a limited common element, including a parking space, carport, or garage stall, then, unless otherwise specified in a written contract or in the declaration, bylaws, or rules and regulations of the association:

(a) The unit owner, and each successive unit owner with exclusive rights to the limited common element where the charging system is installed, is responsible for any costs for damages to the system, any other limited common element or general common element of the common interest community, and any adjacent units, garage stalls, carports, or parking spaces that arise or result from the installation, maintenance, repair, removal, or replacement of the system;

(b) Each successive unit owner with exclusive rights to the limited common element shall assume responsibility for the repair, maintenance, removal, and replacement of the charging system until the system has been removed;

(c) The unit owner and each successive unit owner with exclusive rights to the limited common element shall at all times have and maintain an insurance policy covering the obligations of the unit owner under this subsection (5), is subject to all obligations specified under subparagraph (IV) of paragraph (b) of subsection (4) of this section, and shall name the association as an additional insured under the policy; and

(d) The unit owner and each successive unit owner with exclusive rights to the limited common element is responsible for removing the system if reasonably necessary or convenient for the repair, maintenance, or replacement of the limited common elements or general common elements of the common interest community.

(6) A charging system installed at the unit owner's cost is property of the unit owner. Upon sale of the unit, if the charging system is removable, the unit owner may either remove it or sell it to the buyer of the unit or to the association for an agreed price. Nothing in this subsection (6) requires the buyer or the association to purchase the charging system.

(7) As used in this section:

(a) "Electric vehicle charging system" or "charging system" means a device that is used to provide electricity to a plug-in electric vehicle or plug-in hybrid vehicle, is designed to ensure that a safe connection has been made between the electric grid and the vehicle, and is able to communicate with the vehicle's control system so that electricity flows at an appropriate voltage and current level. An electric vehicle charging system may be wall-mounted or pedestal style and may provide multiple cords to connect with electric vehicles. An electric vehicle charging system must be certified by underwriters laboratories or an equivalent certification and must comply with the current version of article 625 of the national electrical code.

(b) "Level 1" means a charging system that provides charging through a one-hundred-twenty volt AC plug with a cord connector that meets the SAE international J1772 standard or a successor standard.

(c) "Level 2" means a charging system that provides charging through a two-hundred-eight to two-hundred-forty volt AC plug with a cord connector that meets the SAE international J1772 standard or a successor standard.

(8) This section applies only to residential units.

Source: L. 2013: Entire section added, (SB 13-126), ch. 165, p. 535, § 2, effective May 3. **L. 2023:** (1)(d), (2)(a), and IP(4) amended and (2)(c) added, (HB 23-1233), ch. 245, p. 1319, § 4, effective May 23.

Cross references: For the legislative declaration in HB 23-1233, see section 1 of chapter 245, Session Laws of Colorado 2023.

38-33.3-107. Eminent domain.

(1) If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking. Any remnant of a unit remaining after part of a unit is taken under this subsection (1) is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit or on any other basis specified in the declaration; and

(b) The portion of allocated interests divested from the partially acquired unit is automatically reallocated to that unit and to the remaining units in proportion to the respective interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by eminent domain, that portion of any award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition. For the purposes of acquisition of a part of the common elements other than the limited common elements under this subsection (3), service of process on the association shall constitute sufficient notice to all unit owners, and service of process on each individual unit owner shall not be necessary.

(4) The court decree shall be recorded in every county in which any portion of the common interest community is located.

(5) The reallocations of allocated interests pursuant to this section shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

Source: L. 91: Entire article added, p. 1708, § 1, effective July 1, 1992.

38-33.3-108. Supplemental general principles of law applicable.

The principles of law and equity, including, but not limited to, the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this article, except to the extent inconsistent with this article.

Source: L. 91: Entire article added, p. 1709, § 1, effective July 1, 1992.

38-33.3-109. Construction against implicit repeal.

This article is intended to be a unified coverage of its subject matter, and no part of this article shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

Source: L. 91: Entire article added, p. 1709, § 1, effective July 1, 1992.

38-33.3-110. Uniformity of application and construction.

This article shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

Source: L. 91: Entire article added, p. 1709, § 1, effective July 1, 1992.

38-33.3-111. Severability.

If any provision of this article or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provisions or application, and, to this end, the provisions of this article are severable.

Source: L. 91: Entire article added, p. 1709, § 1, effective July 1, 1992.

38-33.3-112. Unconscionable agreement or term of contract.

(1) The court, upon finding as a matter of law that a contract or contract clause relating to a common interest community was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(2) Whenever it is claimed, or appears to the court, that a contract or any contract clause relating to a common interest community is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(a) The commercial setting of the negotiations;

(b) Whether the first party has knowingly taken advantage of the inability of the second party reasonably to protect such second party's interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(c) The effect and purpose of the contract or clause; and

(d) If a sale, any gross disparity at the time of contracting between the amount charged for the property and the value of that property measured by the price at which similar property was readily obtainable in similar transactions. A disparity between the contract price and the value of the property measured by the price at which similar property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

Source: L. 91: Entire article added, p. 1709, § 1, effective July 1, 1992. **L. 93:** (2)(b) amended, p. 643, § 3, effective April 30.

ANNOTATION

Law reviews. For article, "Terminating Common Interest Communities with Horizontal Boundaries under CCIOA", see 51 Colo. Law. 40 (June 2022).

38-33.3-113. Obligation of good faith.

Every contract or duty governed by this article imposes an obligation of good faith in its performance or enforcement.

Source: L. 91: Entire article added, p. 1710, § 1, effective July 1, 1992.

ANNOTATION

Law reviews. For article, "The Business Judgment Rule and Common Interest Communities", see 53 Colo. Law. 34 (June 2024).

38-33.3-114. Remedies to be liberally administered.

(1) The remedies provided by this article shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this article or by other rule of law.

(2) Any right or obligation declared by this article is enforceable by judicial proceeding.

Source: L. 91: Entire article added, p. 1710, § 1, effective July 1, 1992.

ANNOTATION

Court has the authority under subsection (2) to enjoin a future violation of the Colorado Common Interest Ownership Act, if a movant shows noncompliance and harm. Anderson v. Applewood Water Ass'n, 2016 COA 162, 409 P.3d 611.

Reformation of the declaration to indicate assent by proper party was an available remedy under this section. FD Interests v. Fairways at Buffalo Run, 2019 COA 148, 490 P.3d 496.

38-33.3-115. Applicability to new common interest communities.

Except as provided in section 38-33.3-116, this article applies to all common interest communities created within this state on or after July 1, 1992. The provisions of sections 38-33-101 to 38-33-109 do not apply to common interest communities created on or after July 1, 1992. The provisions of sections 38-33-110 to 38-33-113 shall remain in effect for all common interest communities.

Source: L. 91: Entire article added, p. 1710, § 1, effective July 1, 1992. **L. 93:** Entire section amended, p. 644, § 4, effective April 30.

38-33.3-116. Exception for new small cooperatives and small and limited-expense planned communities.

(1) (a) Except as described in subsection (4) of this section, if a cooperative or planned community was created in this state on or after July 1, 1992, and either contains only units restricted to nonresidential use or contains no more than twenty units and is not subject to any development rights, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article 33.3 is applicable.

(b) Except as described in subsection (4) of this section, if a planned community provides in its declaration that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, must not exceed four hundred dollars, as adjusted pursuant to subsection (3) of this section, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article 33.3 is applicable.

(2) (Deleted by amendment, L. 2024.)

(3) (a) The amount of the dollar limitation set forth in subsection (1)(b) of this section must be increased annually on July 1, 1999, and on July 1 of each succeeding year in accordance with any increase in the United States department of labor bureau of labor statistics final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year. The amount of the limitation must not be increased if the final consumer price index for the preceding calendar year did not increase and must not be decreased if the final consumer price index for the preceding calendar year decreased.

(b) The amount of the dollar limitation set forth in subsection (1)(b) of this section, as adjusted as described in subsection (3)(a) of this section, applies to each planned community described in subsection (1)(b) of this section, regardless of when the planned community was created.

(4) A cooperative or planned community that is subject only to sections 38-33.3-105 to 38-33.3-107 pursuant to subsection (1)(a) or (1)(b) of this section may elect to be subject to this entire article 33.3. A cooperative or planned community that so elects shall adopt an amendment to its declaration in accordance with section 38-33.3-217 evidencing the cooperative or planned community's election to be subject to this entire article 33.3.

Source: L. 91: Entire article added, p. 1710, § 1, effective July 1, 1992. **L. 93:** Entire section amended, p. 644, § 5, effective April 30. **L. 98:** Entire section amended, p. 477, § 2, effective July 1. **L. 2009:** (1) and (2) amended, (SB 09-249), ch. 248, p. 1119, § 1, effective May 14. **L.**

2016: (1) and (3) amended, (HB 16-1149), ch. 104, p. 300, § 2, effective July 1, 2018. **L. 2024:** Entire section amended, (SB 24-021), ch. 53, p. 183, § 1, effective August 7.

ANNOTATION

Having opted for an exemption from the Colorado Common Interest Ownership Act (CCIOA) by limiting the amount of homeowners' dues assessed, a homeowners' association cannot refuse to be bound by such limitation and therefore cannot impose a special assessment in an amount above such limit. Quinn v. Castle Park Ranch Prop. Owners Ass'n, 77 P.3d 823 (Colo. App. 2003).

Mixed-use community is not a small planned community that qualifies for exemptions from many CCIOA requirements under subsection (2) where a reciprocal easements and covenants agreement initially created only two lots for the community but reserved to the owner of one of the lots the right to create a condominium regime and the owner subsequently subdivided the lot into sixty-six condominium units. The right to subdivide the lot made the community that it was part of subject to development rights and ineligible to qualify as a small planned community under subsection (2). Arrabelle V.S.R.C.A. v. Arrabelle V.S., 2016 COA 123, 382 P.3d 1275.

38-33.3-116.3. Large planned communities - exemption from certain requirements.

(1) A planned community shall be exempt from the provisions of this article as specified in subsection (3) of this section or as specifically exempted in any other provision of this article, if, at the time of recording the affidavit required pursuant to subsection (2) of this section, the real estate upon which the planned community is created meets both of the following requirements:

(a) It consists of at least two hundred acres;

(b) It is approved for development of at least five hundred residential units, excluding any interval estates, time-share estates, or time-span estates but including any interval units created pursuant to sections 38-33-110 and 38-33-111, and at least twenty thousand square feet of commercial use.

(c) (Deleted by amendment, L. 95, p. 236, § 2, effective July 1, 1995.)

(2) For an exemption authorized in subsection (1) of this section to apply, the property must be zoned within each county in which any part of such parcel is located, and the owner of the parcel shall record with the county clerk and recorder of each county in which any part of such parcel is located an affidavit setting forth the following:

(a) The legal description of such parcel of land;

(b) A statement that the party signing the affidavit is the owner of the parcel in its entirety in fee simple, excluding mineral interests;

(c) The acreage of the parcel;

(d) The zoning classification of the parcel, with a certified copy of applicable zoning regulations attached; and

(e) A statement that neither the owner nor any officer, director, shareholder, partner, or other entity having more than a ten-percent equity interest in the owner has been convicted of a felony within the last ten years.

(3) A large planned community for which an affidavit has been filed pursuant to subsection (2) of this section shall be exempt from the following provisions of this article:

(a) Section 38-33.3-205 (1)(e) to (1)(m);

(b) Section 38-33.3-207 (3);

(c) Section 38-33.3-208;

(d) Section 38-33.3-209 (2)(b) to (2)(d), (2)(f), (2)(g), (4), and (6);

(e) Section 38-33.3-210;

(f) Section 38-33.3-212;

(g) Section 38-33.3-213;

(h) Section 38-33.3-215;

(i) Section 38-33.3-217 (1);

(j) Section 38-33.3-304.

(4) Section 38-33.3-217 (4) shall be applicable as follows: 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 the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(5) (a) The exemption authorized by this section shall continue for the large planned community so long as the owner signing the affidavit is the owner of the real estate described in subsection (2) of this section; except that:

(I) Upon the sale, conveyance, or other transfer of any portion of the real estate within the large planned community, the portion sold, conveyed, or transferred shall become subject to all the provisions of this article;

(II) Any common interest community created on some but not all of the real estate within the large planned community shall be created pursuant to this article; and

(III) When a planned community no longer qualifies as a large planned community, as described in subsection (1) of this section, the exemptions authorized by this section shall no longer be applicable.

(b) Notwithstanding the provisions of subparagraph (III) of paragraph (a) of this subsection (5), all real estate described in a recorded declaration creating a large planned community shall remain subject to such recorded declaration.

(6) The association established for a large planned community shall operate with respect to large planned community-wide matters and shall not otherwise operate as the exclusive unit owners' association with respect to any unit.

(7) The association established for a large planned community shall keep in its principal office and make reasonably available to all unit owners, unit owners' authorized agents, and prospective purchasers of units a complete legal description of all common elements within the large planned community.

Source: L. 94: Entire section added, p. 2845, § 2, effective July 1. **L. 95:** IP(1), (1)(b), (1)(c), and (5) amended and (7) added, p. 236, § 2, effective July 1.

38-33.3-117. Applicability to preexisting common interest communities.

(1) Except as provided in section 38-33.3-119, the following sections 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:

(a) 38-33.3-101 and 38-33.3-102;

(b) 38-33.3-103, to the extent necessary in construing any of the other sections of this article;

(c) 38-33.3-104 to 38-33.3-111;

(d) 38-33.3-114;

(e) 38-33.3-118;

(f) 38-33.3-120;

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

(h) 38-33.3-203 and 38-33.3-217 (7);

(i) 38-33.3-302 (1)(a) to (1)(f), (1)(j) to (1)(m), and (1)(o) to (1)(q);

(i.5) 38-33.3-221.5;

(i.7) 38-33.3-303 (1)(b) and (3)(b);

(j) 38-33.3-311;

(k) 38-33.3-316;

(k.5) 38-33.3-316.3; and

(l) 38-33.3-317, as it existed prior to January 1, 2006, 38-33.3-318, and 38-33.3-319.

(1.5) Except as provided in section 38-33.3-119, the following sections 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) (Deleted by amendment, L. 2006, p. 1217, § 3, effective May 26, 2006.)

(b) 38-33.3-124;

(c) 38-33.3-209.4 to 38-33.3-209.7;

(d) 38-33.3-217 (1);

(e) (Deleted by amendment, L. 2006, p. 1217, § 3, effective May 26, 2006.)

(f) 38-33.3-301;

(g) 38-33.3-302 (3) and (4);

(h) 38-33.3-303 (1)(b), (3)(b), and (4)(b);

(i) 38-33.3-308 (1), (2)(b), (2.5), and (4.5);

(j) 38-33.3-310 (1) and (2);

(k) 38-33.3-310.5;

(l) 38-33.3-315 (7);

(m) 38-33.3-317; and

(n) 38-33.3-401.

(1.7) Except as provided in section 38-33.3-119, section 38-33.3-209.5 (1)(b)(IX) 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, 2010.

(1.8) Except as provided in section 38-33.3-119, section 38-33.3-303 (4)(a) applies 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, 2017.

(1.9) Notwithstanding any other provision of law, section 38-33.3-303.5 applies to all common interest communities created within this state on, before, or after July 1, 1992, with respect to events and circumstances occurring on or after September 1, 2017.

(2) The sections specified in paragraphs (a) to (j) and (l) of subsection (1) of this section shall be applied and construed to establish a clear, comprehensive, and uniform framework for the operation and management of common interest communities within this state and to supplement the provisions of any declaration, bylaws, plat, or map in existence on June 30, 1992. Except for section 38-33.3-217 (7), in the event of specific conflicts between the provisions of the sections specified in paragraphs (a) to (j) and (l) of subsection (1) of this section, and express requirements or restrictions in a declaration, bylaws, a plat, or a map in existence on June 30, 1992, such requirements or restrictions in the declaration, bylaws, plat, or map shall control, but only to the extent necessary to avoid invalidation of the specific requirement or restriction in the declaration, bylaws, plat, or map. Sections 38-33.3-217 (7) and 38-33.3-316 shall be applied and construed as stated in such sections.

(3) Except as expressly provided for in this section, this article shall not apply to common interest communities created within this state before July 1, 1992.

(4) Section 38-33.3-308 (2) to (7) shall apply to all common interest communities created within this state before July 1, 1995, and shall apply to all meetings of the executive board of such a community or any committee thereof occurring on or after said date. In addition, said section 38-33.3-308 (2) to (7) shall apply to all common interest communities created on or after July 1, 1995, and shall apply to all meetings of the executive board of such a community or any committee thereof occurring on or after said date.

Source: L. 91: Entire article added, p. 1711, § 1, effective July 1, 1992; entire section amended, p. 1928, § 64, effective July 1, 1992. **L. 93:** Entire section amended, p. 644, § 6, effective April 30. **L. 95:** (4) added, p. 889, § 2, effective July 1. **L. 99:** (1)(h) amended, p. 695, § 2, effective May 19. **L. 2002:** (2) amended, p. 767, § 1, effective August 7. **L. 2005:** (1)(g) and (1)(l) amended and (1)(i.5) and (1.5) added, p. 1375, §§ 3, 4, effective January 1, 2006. **L. 2006:** (1)(g), (1.5)(a), and (1.5)(e) amended, p. 1217, § 3, effective May 26. **L. 2009:** (1)(i.7) and (1.7) added and (1.5)(h) amended, (HB 09-1359), ch. 257, p. 1165, §§ 3, 4, effective August 5. **L. 2013:** IP(1.5), (1.5)(l), and (1.5)(m) amended and (1.5)(n) added, (HB 13-1134), ch. 198, p. 808, § 4, effective August 7; IP(1) amended and (1)(k.5) added, (HB 13-1276), ch. 351, p. 2038, § 4, effective January 1, 2014. **L. 2016:** (1.8) added, (HB 16-1149), ch. 104, p. 300, § 1, effective

July 1, 2018. **L. 2017:** (1.9) added, (HB 17-1279), ch. 232, p. 906, § 2, effective May 23. **L. 2018:** (1.8) amended, (HB 18-1342), ch. 387, p. 2317, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Terminating Common Interest Communities with Horizontal Boundaries under CCIOA", see 51 Colo. Law. 40 (June 2022).

The presumption that statutes apply prospectively is overcome because subsection (1) expressly provides for application to all common interest communities created before July 1, 1992. Giguere v. SJS Family Enters., 155 P.3d 462 (Colo. App. 2006).

Although subsection (1) does not list several statutory sections as applying to common interest communities created before July 1, 1992, some sections not listed may be referenced to determine whether the statute permits the substantive result to be accomplished by an amendment because the sections listed in subsection (1) are limited to procedural issues. Giguere v. SJS Family Enters., 155 P.3d 462 (Colo. App. 2006).

Town's actions in attempting to enforce provision of 1987 municipal ordinance imposing restrictions on units converted to condominiums is, of necessity, an event and circumstance occurring on or after July 1, 1992, triggering application of the anti-discrimination clause under § 38-33.3-106 (2). Further, § 38-33.3-106 (2) retroactively applies. The plain meaning of an "event and circumstance" under this section unambiguously includes the court's actions in seeking to enforce the 1987 ordinance. Town of Vail v. Vill. Inn Plaza-Phase V, 2021 COA 108, 498 P.3d 1123.

Subsection (1)(g) makes the award of attorney fees to a prevailing party under § 38-33.3-123 (1)(c) applicable to a civil action concerning a common interest declaration that predated the Colorado Common Interest Ownership Act when the civil action involves events and circumstances occurring on or after July 1, 1992. Accetta v. Brooks Towers Condo. Ass'n, 2021 COA 147M-2, 506 P.3d 857.

38-33.3-118. Procedure to elect treatment under the "Colorado Common Interest Ownership Act".

(1) Any organization created prior to July 1, 1992, may elect to have the common interest community be treated as if it were created after June 30, 1992, and thereby subject the common interest community to all of the provisions contained in this article, in the following manner:

(a) If there are members or stockholders entitled to vote thereon, the board of directors may adopt a resolution recommending that such association accept this article and directing that the question of acceptance be submitted to a vote at a meeting of the members or stockholders

entitled to vote thereon, which may be either an annual or special meeting. The question shall also be submitted whenever one-twentieth, or, in the case of an association with over one thousand members, one-fortieth, of the members or stockholders entitled to vote thereon so request. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider electing to be treated as a common interest community organized after June 30, 1992, and thereby accepting the provisions of this article, together with a copy of this article, shall be given to each person entitled to vote at the meeting within the time and in the manner provided in the articles of incorporation, declaration, bylaws, or other governing documents for such association for the giving of notice of meetings to members. Such election to accept the provisions of this article shall require for adoption at least sixty-seven percent of the votes that the persons present at such meeting in person or by proxy are entitled to cast.

(b) If there are no persons entitled to vote thereon, the election to be treated as a common interest community under this article may be made at a meeting of the board of directors pursuant to a majority vote of the directors in office.

(2) A statement of election to accept the provisions of this article shall be executed and acknowledged by the president or vice-president and by the secretary or an assistant secretary of such association and shall set forth:

(a) The name of the common interest community and association;

(b) That the association has elected to accept the provisions of this article;

(c) That there were persons entitled to vote thereon, the date of the meeting of such persons at which the election was made to be treated as a common interest community under this article, that a quorum was present at the meeting, and that such acceptance was authorized by at least sixty-seven percent of the votes that the members or stockholders present at such meeting in person or by proxy were entitled to cast;

(d) That there were no members or stockholders entitled to vote thereon, the date of the meeting of the board of directors at which election to accept this article was made, that a quorum was present at the meeting, and that such acceptance was authorized by a majority vote of the directors present at such meeting;

(e) (Deleted by amendment, L. 93, p. 645, § 7, effective April 30, 1993.)

(f) The names and respective addresses of its officers and directors; and

(g) If there were no persons entitled to vote thereon but a common interest community has been created by virtue of compliance with section 38-33.3-103 (8), that the declarant desires for the common interest community to be subject to all the terms and provisions of this article.

(3) The original statement of election to be treated as a common interest community subject to the terms and conditions of this article shall be duly recorded in the office of the clerk and recorder for the county in which the common interest community is located.

(4) Upon the recording of the original statement of election to be treated as a common interest community subject to the provisions of this article, said common interest community shall be subject to all provisions of this article. Upon recording of the statement of election, such common interest community shall have the same powers and privileges and be subject to the same duties, restrictions, penalties, and liabilities as though it had been created after June 30, 1992.

(5) Notwithstanding any other provision of this section, and with respect to a common interest community making the election permitted by this section, this article shall apply only with respect to events and circumstances occurring on or after July 1, 1992, and does not invalidate provisions of any declaration, bylaws, or plats or maps in existence on June 30, 1992.

Source: L. 91: Entire article added, p. 1711, § 1, effective July 1, 1992; (5) amended, p. 1928, § 65, effective July 1, 1992. **L. 93:** IP(1), (1)(a), (2)(c), and (2)(e) amended, p. 645, § 7, effective April 30.

ANNOTATION

Law reviews. For article, "Terminating Common Interest Communities with Horizontal Boundaries under CCIOA", see 51 Colo. Law. 40 (June 2022).

Section provides exclusive means for a common interest community association that existed prior to the effective date of the Colorado Common Interest Ownership Act (CCIOA) to elect to be governed by the entirety of the CCIOA. An election cannot be made simply by recording a new declaration that might be interpreted to adopt the provisions of the CCIOA. Accetta v. Brooks Towers Residences Condo., 2021 COA 87, 496 P.3d 821.

38-33.3-119. Exception for small preexisting cooperatives and planned communities.

If a cooperative or planned community created within this state before July 1, 1992, contains no more than ten units and is not subject to any development rights, or if its declaration limits its annual common expense liability to the amount specified in section 38-33.3-116 (1), then it is subject only to sections 38-33.3-105 to 38-33.3-107 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of section 38-33.3-120, in which case all the sections enumerated in section 38-33.3-117 apply to that planned community.

Source: L. 91: Entire article added, p. 1713, § 1, effective July 1, 1992. **L. 2009:** Entire section amended, (SB 09-249), ch. 248, p. 1120, § 2, effective May 14. **L. 2015:** Entire section amended, (HB 15-1095), ch. 114, p. 344, § 1, effective August 5.

38-33.3-120. Amendments to preexisting governing instruments.

(1) In the case of amendments to the declaration, bylaws, or plats and maps of any common interest community created within this state before July 1, 1992, which has not elected treatment under this article pursuant to section 38-33.3-118:

(a) If the substantive result accomplished by the amendment was permitted by law in effect prior to July 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this article; and

(b) If the substantive result accomplished by the amendment is permitted by this article, and was not permitted by law in effect prior to July 1, 1992, the amendment may be made under this article.

(2) An amendment to the declaration, bylaws, or plats and maps authorized by this section to be made under this article must be adopted in conformity with the procedures and requirements of the law that applied to the common interest community at the time it was created and with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers, or privileges permitted by this article, all correlative obligations, liabilities, and restrictions in this article also apply to that person.

(3) An amendment to the declaration may also be made pursuant to the procedures set forth in section 38-33.3-217 (7).

Source: L. 91: Entire article added, p. 1713, § 1, effective July 1, 1992. **L. 2002:** (3) added, p. 767, § 2, effective August 7.

ANNOTATION

There is a two-step process in reviewing the validity of an amendment to a plat of a common interest community created before July 1, 1992. First, the amendment's validity as a question of substance is considered under subsection (1) and then the amendment's validity as a question of procedure is considered under subsection (2). Giguere v. SJS Family Enters., 155 P.3d 462 (Colo. App. 2006).

Section 38-33.3-217 (4)(a) contains limited exceptions to subsection (1)(a). Changes in the allocated interests of a unit, for example, "the undivided interests in and to the general common elements appurtenant to each unit", are among those for which § 38-33.3-217 (4)(a) allows the declaration to require greater than a sixty-seven percent vote. Therefore, a pre-1992 declaration's requirement for unanimous consent was properly applied to that provision despite the adoption of amendments to other provisions by a two-thirds vote, in accordance with current law. DA Mtn. Rentals v. Lodge at Lionshead, 2016 COA 141, 409 P.3d 564; Francis v. Aspen Mtn. Condo. Ass'n, 2017 COA 19, 401 P.3d 125.

38-33.3-120.5. Extension of declaration term.

(1) If a common interest community has a declaration in effect with a limited term of years that was recorded prior to July 1, 1992, and if, before the term of the declaration expires, the unit owners in the common interest community have not amended the declaration pursuant to section 38-33.3-120 and in accordance with any conditions or fixed limitations described in the declaration, the declaration may be extended as provided in this section.

(2) The term of the declaration may be extended:

(a) If the executive board adopts a resolution recommending that the declaration be extended for a specific term not to exceed twenty years and directs that the question of extending the term of the declaration be submitted to the unit owners, as members of the association; and

(b) If an extension of the term of the declaration is approved by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies.

(3) Except for the extension of the term of a declaration as authorized by this section, no other provision of a declaration may be amended pursuant to the provisions of this section.

(4) For any meeting of unit owners at which a vote is to be taken on a proposed extension of the term of a declaration as provided in this section, the secretary or other officer specified in the bylaws shall provide written notice to each unit owner entitled to vote at the meeting stating that the purpose, or one of the purposes, of the meeting is to consider extending the term of the declaration. The notice shall be given in the time and manner specified in section 38-33.3-308 or in the articles of incorporation, declaration, bylaws, or other governing documents of the association.

(5) The extension of the declaration, if approved, shall be included in an amendment to the declaration and shall be executed, acknowledged, and recorded by the association in the records of the clerk and recorder of each county in which any portion of the common interest community is located. The amendment shall include:

(a) A statement of the name of the common interest community and the association;

(b) A statement that the association has elected to extend the term of the declaration pursuant to this section and the term of the approved extension;

(c) A statement that indicates that the executive board has adopted a resolution recommending that the declaration be extended for a specific term not to exceed twenty years, that sets forth the date of the meeting at which the unit owners elected to extend the term of the declaration, and that declares that the extension was authorized by a vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies;

(d) A statement of the names and respective addresses of the officers and executive board members of the association.

(6) Upon the recording of the amendment required by subsection (5) of this section, and subject to the provisions of this section, a common interest community is subject to all provisions of the declaration, as amended.

Source: L. 98: Entire section added, p. 478, § 3, effective July 1.

38-33.3-121. Applicability to nonresidential planned communities.

This article does not apply to a planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the article does apply to that planned community. This article applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted, only if the declaration so provides or the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

Source: L. 91: Entire article added, p. 1714, § 1, effective July 1, 1992.

38-33.3-122. Applicability to out-of-state common interest communities.

This article does not apply to common interest communities or units located outside this state.

Source: L. 91: Entire article added, p. 1714, § 1, effective July 1, 1992.

38-33.3-123. Enforcement - limitation.

(1) (a) If a unit owner fails to timely pay assessments or any money owed to the association, the association may require, without the necessity of commencing a legal proceeding, reimbursement for the following, in addition to the assessments or owed money:

(I) Actual collection costs of the unpaid assessments;

(II) Reasonable attorney fees incurred as a result of the failure to pay; except that the association is not entitled to reimbursement for attorney fees that exceed five thousand dollars or fifty percent of the assessments and any money owed to the association as described in the introductory portion of this subsection (1)(a), whichever is less; and

(III) Other actual costs incurred as a result of the failure to pay.

(b) For any failure to comply with this article 33.3 or the declaration, bylaws, articles, or rules and regulations, other than the payment of assessments owed to the association, the association, any unit owner, or any class of unit owners adversely affected by the failure to comply may seek, without the necessity of commencing a legal proceeding, reimbursement for:

(I) Actual collection costs incurred as a result of the failure to comply; and

(II) Reasonable attorney fees and costs incurred as a result of the failure to comply; except that the association is not entitled to reimbursement for attorney fees that exceed five thousand dollars or fifty percent of the actual costs the association or unit owner incurred as a result of the failure to comply, whichever is less.

(c) (I) In any civil action to enforce or defend this article 33.3 or the declaration, bylaws, articles, or rules and regulations, the court shall award reasonable attorney fees, actual costs, and actual costs of collection to the prevailing party, except as provided in subsection (1)(c)(II) of this section.

(II) In connection with any civil action described in subsection (1)(c)(I) of this section to collect money owed to an association from a unit owner, the court shall not award attorney fees to the association in an amount in excess of five thousand dollars or fifty percent of the actual costs the association incurred as a result of the failure to comply with this article 33.3 or with the declaration, bylaws, articles, or rules and regulations, whichever is less; except that the court may award attorney fees in excess of the limitations, based on the court's discretion, if the court finds that the unit owner was financially, physically, and reasonably able to comply with the declaration, bylaws, articles, or rules and regulations but willfully failed to comply.

(d) Notwithstanding paragraph (c) of this subsection (1), in connection with any claim in which a unit owner is alleged to have violated a provision of this article or of the declaration,

bylaws, articles, or rules and regulations of the association and in which the court finds that the unit owner prevailed because the unit owner did not commit the alleged violation:

(I) The court shall award the unit owner reasonable attorney fees and costs incurred in asserting or defending the claim; and

(II) The court shall not award costs or attorney fees to the association. In addition, the association shall be precluded from allocating to the unit owner's account with the association any of the association's costs or attorney fees incurred in asserting or defending the claim.

(e) A unit owner shall not be deemed to have confessed judgment to attorney fees or collection costs.

(f) In determining reasonable attorney fees pursuant to this subsection (1) relating to an association's foreclosure of a lien against a unit owner for unpaid assessments, the court shall give consideration to all relevant factors, including:

(I) The amount of the unpaid assessments;

(II) Whether the amount of the attorney fees requested exceeds the amount of the unpaid assessments;

(III) Whether the amount of time spent or fees incurred by the attorney are disproportionate to the needs of the case, considering the complexity of the case or the efforts required to obtain the unpaid assessments;

(III.5) Whether the association incurred inflated or duplicative attorney fees due to a stay in court proceedings pursuant to subsection (3) of this section for the association to come into strict compliance with applicable lien or foreclosure provisions of this title 38;

(IV) Whether the foreclosure action was contested or required the association to respond to unmeritorious defenses; and

(V) Other factors typically considered in determining an award of attorney fees.

(g) The limitations on attorney fees in subsections (1)(a)(II), (1)(b)(II), and (1)(c)(II) of this section are adjusted for inflation on August 1, 2025, and each year thereafter. Inflation is measured by the annual percentage change in the United States department of labor's bureau of labor statistics consumer price index, or a successor index, for Denver-Aurora-Lakewood for all items paid by urban consumers.

(2) Notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of the declaration, bylaws, articles, or rules and regulations or to compel the removal of any building or improvement because of the violation of the terms of any such building restriction unless the action is commenced within one year from the date from which the person commencing the

action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

(3) Notwithstanding any law to the contrary, as a condition precedent to recovering money owed to an association, collection costs, or reasonable attorney fees or costs through the foreclosure of an association lien, the association shall strictly comply with any applicable association lien or foreclosure provisions of this title 38 and any applicable lien or foreclosure provisions of the association's declaration, bylaws, articles, and rules and regulations. In addition, if a court determines that a common interest community is not in strict compliance with the lien or foreclosure provisions of this title 38, the court may stay the proceedings to grant the association a reasonable period of time to come into strict compliance with the law. During the stay in proceedings, the association shall not assess or accrue late fees, interest, or other delinquency charges against the unit owner.

Source: L. 91: Entire article added, p. 1714, § 1, effective July 1, 1992. **L. 96:** Entire section amended, p. 1087, § 1, effective May 23. **L. 2005:** (1) amended, p. 1376, § 5, effective January 1, 2006. **L. 2006:** (1)(c) amended, p. 1217, § 4, effective May 26. **L. 2024:** (1)(a), (1)(b), and (1)(c) amended and (1)(f) and (1)(g) added, (HB 24-1337), ch. 422, p. 2880, § 1, effective August 7. **L. 2025:** (1)(f)(III.5) and (3) added, (HB 25-1043), ch. 433, p. 2497, § 2, effective October 1.

ANNOTATION

The express language of this section requires a plaintiff to prevail on a claim to obtain an award of attorney fees and no fees will be awarded where the merits of a defendant's affirmative defenses have not yet been adjudicated. Dunne v. Shenandoah Homeowners Ass'n, Inc., 12 P.3d 340 (Colo. App. 2000).

There is no "prevailing party" upon dissolution of a preliminary injunction, because at that point there has not yet been a resolution on the merits. DeJean v. Grosz, 2015 COA 74, 412 P.3d 733.

Where HOA prevailed on a significant issue against the declarant, the HOA was entitled to have the trial court determine and award it reasonable attorney fees and costs under this section. FD Interests v. Fairways at Buffalo Run, 2019 COA 148, 490 P.3d 496.

Even assuming a trial court could determine that an overall case ended in a tie, subsection (1)(c) requires a court to award fees "for each claim...to the party prevailing on such claim". Therefore, the statutory claim-by-claim approach differs from the C.R.C.P. 54(d) analysis of multiple claims cases. Giguere v. SJS Family Enters., 155 P.3d 462 (Colo. App. 2006) (decided under law in effect prior to the 2006 amendment).

Subsection (1)(c), as amended in 2006, requires a court to determine the prevailing party in the action as a whole, not on a claim-by-claim basis. Far Horizons Farm v. Flying Dutchman Condo., 2023 COA 99, 542 P.3d 700.

By its express language this section does not apply to tort claims in which the plaintiff's primary purpose was not to enforce the covenants contained in the declaration but was to secure a damage award. Colo. Homes, Ltd. v. Loerch-Wilson, 43 P.3d 718 (Colo. App. 2001).

As a prevailing party on the defendant's claim for an assessment lien based on property damages, plaintiff is entitled to attorney fees and costs for that aspect of the case. Hallmark Bldg. Co. v. Westland Meadows Owners Ass'n, 983 P.2d 170 (Colo. App. 1999).

Section requires an award of attorney fees to defendants as a prevailing party in a civil action where plaintiff brought the action to enforce provisions of the Colorado Common Interest Ownership Act (CCIOA), even though the court rejected the plaintiff's claim that the defendant was subject to the CCIOA. Accetta v. Brooks Towers Residences Condo., 2021 COA 87, 496 P.3d 821.

Where a civil action is brought to enforce the covenants of a property owners' association, both elements of subsection (1)(c) are met. Cody Park v. Harder, 251 P.3d 1 (Colo. App. 2009).

The plain language of subsection (1)(c) does not require a prevailing party to be a unit owner to collect attorney fees, and the omission of the language from this subsection, in light of its inclusion in other subsections of the statute, evidences the general assembly's intent not to limit recovery of attorney fees under that subsection to unit owners. Cody Park v. Harder, 251 P.3d 1 (Colo. App. 2009).

Subsection (1)(c)'s requirement to award attorney fees to prevailing party applies in a civil action concerning a common interest declaration that predated the CCIOA. Section 38-33.3-117 incorporates the statute with regard to events and circumstances occurring on or after July 1, 1992. Accetta v. Brooks Towers Condo. Ass'n, 2021 COA 147M-2, 506 P.3d 857.

Collateral source rule does not apply to limit an award of fees to the amount of the deductible paid under a directors and officers insurance policy. Accetta v. Brooks Towers Condo. Ass'n, 2021 COA 147M-2, 506 P.3d 857.

No award of attorney fees to condominium association on appeal under C.A.R. 39.5 and this section. Subsection (1)(c) provides for recovery of attorney fees only in actions to "enforce or defend the provision of this article or of the declaration, bylaws, articles, or rules and regulations". Condominium association defended against purchasers' breach of contract action and sought declaratory action that contract was void. Neither purchasers' claims nor associations' counterclaims were to enforce or defend the article; thus, the statute does not apply. Platt v. Aspenwood Condo. Ass'n, 214 P.3d 1060 (Colo. App. 2009).

Allocation of liability for 30% of attorney fees award to owner of lot improper where owner did not attempt to use an easement that violated restrictive covenants, but merely refused to vacate the easement pending a legal determination as to its validity and where co-defendant actually commenced building a road in reliance on the easement. Allocation of liability for attorney fees must be commensurate with failure to comply with covenants and remand to the trial court for reapportionment of liability for attorney fees was necessary. Buick v. Highland Meadow Estates, 21 P.3d 860 (Colo. 2001).

Statute of limitations defense was not preserved on appeal where defendants raised the defense in their answer to plaintiffs' second amended complaint and in the trial management order, but failed to bring the defense to the court's attention in opening or closing statements, in an oral motion for a directed verdict, or in a motion for a new trial. Highland Meadows Estates v. Buick, 994 P.2d 459 (Colo. App. 1999), aff'd in part, rev'd in part on other grounds, 21 P.3d 860 (Colo. 2001).

Applied in Giguere v. SJS Family Enters., 155 P.3d 462 (Colo. App. 2006); Abril Meadows Homeowner's Ass'n v. Castro, 211 P.3d 64 (Colo. App. 2009); Briargate at Seventeenth Ave. v. Nelson, 2021 COA 78M, 494 P.3d 1149.

38-33.3-124. Legislative declaration - alternative dispute resolution encouraged - policy statement required.

(1) (a) (I) 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.

(II) The general assembly hereby specifically endorses and encourages associations, unit owners, managers, declarants, and all other parties to disputes arising under this article to agree to make use of all available public or private resources for alternative dispute resolution, including, without limitation, the resources offered by the office of dispute resolution within the Colorado judicial branch through its website.

(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.

(2) (a) Any controversy between an association and a unit owner arising out of the provisions of this article may be submitted to mediation by agreement of the parties prior to the commencement of any legal proceeding.

(b) The mediation agreement, if one is reached, may be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process without prejudice.

(c) If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.

(3) The declaration, bylaws, or rules of the association may specify situations in which disputes shall be resolved by binding arbitration under the uniform arbitration act, part 2 of article 22 of title 13, C.R.S., or by another means of alternative dispute resolution under the "Dispute Resolution Act", part 3 of article 22 of title 13, C.R.S.

Source: L. 98: Entire section added, p. 471, § 1, effective July 1. **L. 2005:** Entire section amended, p. 1377, § 6, effective January 1, 2006. **L. 2006:** (1) amended, p. 1218, § 5, effective May 26. **L. 2008:** Entire section amended, p. 557, § 3, effective July 1.

ANNOTATION

This section is consistent with an association's power to pursue "litigation" under § 38-33.3-302 (1)(d). Triple Crown v. Vill. Homes of Colo., 2013 COA 150M, 328 P.3d 275.

PART 2

CREATION, ALTERATION, AND TERMINATION OF COMMON INTEREST COMMUNITIES

38-33.3-201. Creation of common interest communities.

(1) (a) A common interest community may be created pursuant to this article 33.3 only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration must be:

(I) Executed by or with the express written authorization of the owner or owners of the real estate that is to be included in the common interest community, as shown by the records of the county clerk and recorder's office of the county where the real estate is located;

(II) Recorded in every county in which any portion of the common interest community is located;

(III) Indexed in the grantee's index in the name of the common interest community and in the name of the association; and

(IV) Indexed in the grantor's index in the name of each person executing the declaration.

(b) No common interest community is created until the plat or map for the common interest community is recorded.

(2) In a common interest community with horizontal unit boundaries, a declaration, or an amendment to a declaration, creating or adding units shall include a certificate of completion executed by an independent licensed or registered engineer, surveyor, or architect stating that all structural components of all buildings containing or comprising any units thereby created are substantially completed.

Source: L. 91: Entire article added, p. 1715, § 1, effective July 1, 1992. **L. 93:** Entire section amended, p. 646, § 8, effective April 30. **L. 2024:** (1) amended, (HB 24-1383), ch. 182, p. 983, § 2, effective August 7.

Cross references: For the legislative declaration in HB 24-1383, see section 1 of chapter 182, Session Laws of Colorado 2024.

ANNOTATION

Law reviews. For article, "Construction Defect Statutes of Limitation and Repose Update, Part I", see 49 Colo. Law. 26 (Dec. 2020).

Since a declaration must be executed in the same manner as a deed, it must be signed by the declarant to properly establish a homeowners' association. The declarant's signature on an accompanying document, such as a plat, is not sufficient. Abril Meadows Homeowner's Ass'n v. Castro, 211 P.3d 64 (Colo. App. 2009).

Actual awareness or knowledge of the declaration by a person sought to be bound by it cannot compensate for the absence of a signed declaration. Abril Meadows Homeowner's Ass'n v. Castro, 211 P.3d 64 (Colo. App. 2009).

Common interest community not created by implication. Recorded plat, deeds, and subdivision agreement, taken together, do not create a common interest community when the documents do not obligate homeowners to pay expenses related to community-owned space, do not expressly create a homeowners' association, and lack too many statutorily prescribed components. McMullin v. Hauer, 2018 CO 57, 420 P.3d 271.

For one or more documents to create a common interest community and amount to a declaration, they must at least (1) establish an obligation to pay for various expenses associated with common property and (2) attach that obligation to individually owned property. Where a declaration of

covenants, conditions, and restrictions for a community association did not alone, or with the corresponding plat, encumber any individually owned property with an obligation to pay for maintenance of other property, the document was not a declaration for the purposes of this section and a common interest community was not created. Pulte Home Corp. v. Countryside Cmty. Ass'n, Inc., 2016 CO 64, 382 P.3d 821.

A pre-Colorado Common Interest Ownership Act common interest community exists when (1) individual properties are (2) properly burdened with a servitude that imposes an obligation to either (a) pay for the use of or contribute to the maintenance of commonly held or enjoyed property or (b) pay dues or assessments to an association that provides a service or enforces a servitude on commonly held or enjoyed property. Frisco Lot 3 LLC v. Giberson Ltd. P'ship, 2024 COA 125, 564 P.3d 1061.

38-33.3-202. Unit boundaries.

(1) Except as provided by the declaration:

(a) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(c) Subject to the provisions of paragraph (b) of this subsection (1), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

Source: L. 91: Entire article added, p. 1715, § 1, effective July 1, 1992.

38-33.3-203. Construction and validity of declaration and bylaws.

(1) All provisions of the declaration and bylaws are severable.

(2) The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws, or rules and regulations.

(3) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails, except to the extent the declaration is inconsistent with this article.

(4) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this article. Whether a substantial failure impairs marketability is not affected by this article.

Source: L. 91: Entire article added, p. 1716, § 1, effective July 1, 1992.

ANNOTATION

Subsection (3) provides that the Colorado Common Interest Ownership Act prevails over any inconsistent provision in a declaration. Heritage Vill. Owners Ass'n v. Golden Heritage Investors, Ltd., 89 P.3d 513 (Colo. App. 2004).

Development rights in a declaration that does not include a time limitation are void ab initio. Section 38-33.3-205 (1)(h) is unambiguous in requiring a time limitation, and failure to include such a limitation is not an insubstantial defect that may be overlooked under subsection (4) of this section. Silverview at Overlook, LLC v. Overlook at Mt. Crested Butte Ltd. Liab. Co., 97 P.3d 252 (Colo. App. 2004).

38-33.3-204. Description of units.

A description of a unit may set forth the name of the common interest community, the recording data for the declaration, the county in which the common interest community is located, and the identifying number of the unit. Such description is a legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws. It shall not be necessary to use the term "unit" as a part of a legally sufficient description of a unit.

Source: L. 91: Entire article added, p. 1716, § 1, effective July 1, 1992. **L. 92:** Entire section amended, p. 2181, § 51, effective June 2. **L. 93:** Entire section amended, p. 647, § 9, effective April 30.

38-33.3-205. Contents of declaration.

(1) The declaration must contain:

(a) The names of the common interest community and the association and a statement that the common interest community is a condominium, cooperative, or planned community;

(b) The name of every county in which any part of the common interest community is situated;

(c) A legally sufficient description of the real estate included in the common interest community;

(d) A statement of the maximum number of units that the declarant reserves the right to create;

(e) In a condominium or planned community, a description, which may be by plat or map, of the boundaries of each unit created by the declaration, including the unit's identifying number; or, in a cooperative, a description, which may be by plat or map, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;

(f) A description of any limited common elements, other than those specified in section 38-33.3-202 (1)(b) and (1)(d) or shown on the map as provided in section 38-33.3-209 (2)(j) and, in a planned community, any real estate that is or must become common elements;

(g) A description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in section 38-33.3-202 (1)(b) and (1)(d), together with a statement that they may be so allocated;

(h) A description of any development rights and other special declarant rights reserved by the declarant, together with a description sufficient to identify the real estate to which each of those rights applies and the time limit within which each of those rights must be exercised;

(i) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:

(I) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards; and

(II) A statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(j) Any other conditions or limitations under which the rights described in paragraph (h) of this subsection (1) may be exercised or will lapse;

(k) An allocation to each unit of the allocated interests in the manner described in section 38-33.3-207;

(l) Any restrictions on the use, occupancy, and alienation of the units and on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community or on termination of the common interest community;

(m) The recording data for recorded easements and licenses appurtenant to, or included in, the common interest community or to which any portion of the common interest community is or may become subject by virtue of a reservation in the declaration;

(n) All matters required by sections 38-33.3-201, 38-33.3-206 to 38-33.3-209, 38-33.3-215, 38-33.3-216, and 38-33.3-303 (4);

(o) Reasonable provisions concerning the manner in which notice of matters affecting the common interest community may be given to unit owners by the association or other unit owners;

(p) A statement, if applicable, that the planned community is a large planned community and is exercising certain exemptions from the "Colorado Common Interest Ownership Act" as such a large planned community;

(q) In a large planned community:

(I) A general description of every common element that the declarant is legally obligated to construct within the large planned community together with the approximate date by which each such common element is to be completed. The declarant shall be required to complete each such common element within a reasonable time after the date specified in the declaration, unless the declarant, due to an act of God, is unable to do so. The declarant shall not be legally obligated with respect to any common element not identified in the declaration.

(II) A general description of the type of any common element that the declarant anticipates may be constructed by, maintained by, or operated by the association. The association shall not assess members for the construction, maintenance, or operation of any common element that is not described pursuant to this subparagraph (II) unless such assessment is approved by the vote of a majority of the votes entitled to be cast in person or by proxy, other than by declarant, at a meeting duly convened as required by law.

(2) The declaration may contain any other matters the declarant considers appropriate.

(3) The plats and maps described in section 38-33.3-209 may contain certain information required to be included in the declaration by this section.

(4) A declarant may amend the declaration, a plat, or a map to correct clerical, typographical, or technical errors.

(5) A declarant may amend the declaration to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, or the federal national mortgage association.

Source: L. 91: Entire article added, p. 1716, § 1, effective July 1, 1992. **L. 93:** (1)(h) and (1)(n) amended, p. 647, § 10, effective April 30. **L. 94:** (1)(p) added, p. 2847, § 3, effective July 1. **L. 95:** (1)(q) added, p. 237, § 3, effective July 1. **L. 98:** (1)(h) amended and (4) and (5) added, p. 480, § 4, effective July 1.

ANNOTATION

Law reviews. For article, "In 'Case' You Missed It: Recent Real Estate Case Law Highlights", see 50 Colo. Law. 36 (Apr. 2021). For article, "The State of Short-Term Rentals in Colorado", see 51 Colo. Law. 34 (Apr. 2022).

Since a declaration must be executed in the same manner as a deed, it must be signed by the declarant to properly establish a homeowners' association. Where an accompanying plat bore the declarant's signature, but did not contain the information required by this section such as the description of any development rights reserved by the declarant or notice procedures pertaining to covenant violations, the filing was insufficient. Abril Meadows Homeowner's Ass'n v. Castro, 211 P.3d 64 (Colo. App. 2009).

Airplane runway was not subject to the declaration of restrictions for a subdivision because it was not a common area included in the legal description of the subdivision. Accordingly, recording data for a retained easement across the runway was not required by subsection (1)(m). Brush Creek Airport, L.L.C. v. Avion Park, L.L.C., 57 P.3d 738 (Colo. App. 2002).

Development rights in a declaration that does not include a time limitation are void ab initio. Subsection (1)(h) is unambiguous in requiring a time limitation, and failure to include such a limitation is not an insubstantial defect that may be overlooked under § 38-33.3-203 (4). Silverview at Overlook, LLC v. Overlook at Mt. Crested Butte Ltd. Liab. Co., 97 P.3d 252 (Colo. App. 2004).

Because property owner failed to impose any time limit in declaration, property owner failed to properly reserve its development rights. Where a provision is automatically renewable indefinitely, the provision cannot

be considered a time limit. Miller v. Curry, 203 P.3d 626 (Colo. App. 2009).

A declarant may withhold properties from the common interest community and reserve the right to incorporate them gradually over time if the declaration clearly describes the property subject to reserved development rights. Pulte Home Corp. v. Countryside Cmty. Ass'n, Inc., 2016 CO 64, 382 P.3d 821.

If the declaration does not exclude some of the property initially, all of the property is encumbered by the covenants, conditions, and restrictions as soon as the community is formed. FD Interests v. Fairways at Buffalo Run, 2019 COA 148, 490 P.3d 496.

Where the declaration included all property in the attached legal description, all of the property other than the units was rendered "common elements" upon formation of the community. FD Interests v. Fairways at Buffalo Run, 2019 COA 148,490 P.3d 496.

38-33.3-206. Leasehold common interest communities.

(1) Any lease, the expiration or termination of which may terminate the common interest community or reduce its size, must be recorded. In a leasehold condominium or leasehold planned community, the declaration must contain the signature of each lessor of any such lease in order for the provisions of this section to be effective. The declaration must state:

(a) The recording data for the lease;

(b) The date on which the lease is scheduled to expire;

(c) A legally sufficient description of the real estate subject to the lease;

(d) Any rights of the unit owners to redeem the reversion and the manner whereby those rights may be exercised or state that they do not have those rights;

(e) Any rights of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease or state that they do not have those rights; and

(f) Any rights of the unit owners to renew the lease and the conditions of any renewal or state that they do not have those rights.

(2) After the declaration for a leasehold condominium or leasehold planned community is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

(3) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(4) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests shall be reallocated in accordance with section 38-33.3-107 (1), as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

Source: L. 91: Entire article added, p. 1718, § 1, effective July 1, 1992.

38-33.3-207. Allocation of allocated interests.

(1) The declaration must allocate to each unit:

(a) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and, to the extent not allocated in the bylaws of the association, a portion of the votes in the association;

(b) In a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association, and, to the extent not allocated in the bylaws of the association, a portion of the votes in the association;

(c) In a planned community, a fraction or percentage of the common expenses of the association and, to the extent not allocated in the bylaws of the association, a portion of the votes in the association; except that, in a large planned community, the common expenses of the association may be paid from assessments and allocated as set forth in the declaration and the votes in the association may be allocated as set forth in the declaration.

(2) The declaration must state the formulas used to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(3) If units may be added to or withdrawn from the common interest community, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the common interest community after the addition or withdrawal.

(4) (a) The declaration may provide:

(I) That different allocations of votes shall be made to the units on particular matters specified in the declaration;

(II) For cumulative voting only for the purpose of electing members of the executive board;

(III) For class voting on specified issues affecting the class, including the election of the executive board; and

(IV) For assessments including, but not limited to, assessments on retail sales and services not to exceed six percent of the amount charged for the retail sale or service, and real estate transfers not to exceed three percent of the real estate sales price or its equivalent.

(b) A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this article, nor may units constitute a class because they are owned by a declarant.

(c) Assessments allowed under subparagraph (IV) of paragraph (a) of this subsection (4) shall be entitled to the lien provided for under section 38-33.3-316 (1) but shall not be entitled to the priority established by section 38-33.3-316 (2)(b).

(d) Communities with classes for voting specified in the declaration as allowed pursuant to subparagraph (III) of paragraph (a) of this subsection (4) may designate classes of members on a reasonable basis which do not allow the declarant to control the association beyond the period provided for in section 38-33.3-303, including, without limitation, residence owners, commercial space owners, and owners of lodging space and to elect members to the association executive board from such classes.

(5) Except for minor variations due to the rounding of fractions or percentages, the sum of the common expense liabilities and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units shall each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(6) In a condominium, the common elements are not subject to partition except as allowed for in section 38-33.3-312, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements not allowed for in section 38-33.3-312, that is made without the unit to which that interest is allocated is void.

(7) In a cooperative, any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

Source: L. 91: Entire article added, p. 1719, § 1, effective July 1, 1992. **L. 93:** (1) amended, p. 647, § 11, effective April 30. **L. 94:** (1)(c) and (4)(a) amended and (4)(c) and (4)(d) added, p. 2847, § 4, effective July 1. **L. 95:** (4)(a)(IV) amended, p. 238, § 4, effective July 1. **L. 98:**

(4)(a)(III), (4)(a)(IV), and (4)(d) amended, p. 480, § 5, effective July 1. **L. 2002:** (6) amended, p. 767, § 3, effective August 7.

ANNOTATION

Law reviews. For article, "Terminating Common Interest Communities with Horizontal Boundaries under CCIOA", see 51 Colo. Law. 40 (June 2022).

38-33.3-208. Limited common elements.

(1) Except for the limited common elements described in section 38-33.3-202 (1)(b) and (1)(d), the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the unit owners whose units are affected.

(2) Subject to any provisions of the declaration, a limited common element may be reallocated between or among units after compliance with the procedure set forth in this subsection (2). In order to reallocate limited common elements between or among units, the unit owners of those units, as the applicants, must submit an application for approval of the proposed reallocation to the executive board, which application shall be executed by those unit owners and shall include:

(a) The proposed form for an amendment to the declaration as may be necessary to show the reallocation of limited common elements between or among units;

(b) A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the executive board; and

(c) Such other information as may be reasonably requested by the executive board. No reallocation shall be effective without the approval of the executive board. The reallocation shall be effectuated by an amendment signed by the association and by those unit owners between or among whose units the reallocation is made, which amendment shall be recorded as provided in section 38-33.3-217 (3). All costs and attorney fees incurred by the association as a result of the application shall be the sole obligation of the applicants.

(3) A common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with section 38-33.3-205 (1)(g). The allocations must be made by amendments to the declaration prepared, executed, and recorded by the declarant.

Source: L. 91: Entire article added, p. 1720, § 1, effective July 1, 1992.

38-33.3-209. Plats and maps.

(1) A plat or map is a part of the declaration and is required for all common interest communities except cooperatives. A map is required only for a common interest community with units having a horizontal boundary. The requirements of this section shall be deemed satisfied so long as all of the information required by this section is contained in the declaration, a map or a plat, or some combination of any two or all of the three. Each plat or map must be clear and legible. When a map is required under any provision of this article, the map, a plat, or the declaration shall contain a certification that all information required by this section is contained in the declaration, the map or a plat, or some combination of any two or all of the three.

(2) In addition to meeting the requirements of a land survey plat as set forth in section 38-51-106, each map shall show the following, except to the extent such information is contained in the declaration or on a plat:

(a) The name and a general schematic plan of the entire common interest community;

(b) The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(c) A legally sufficient description, which may be of the whole common interest community or any portion thereof, of any real estate subject to development rights and a description of the rights applicable to such real estate;

(d) The extent of any existing encroachments across any common interest community boundary;

(e) To the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the common interest community;

(f) The location and dimensions of the vertical boundaries of each unit and that unit's identifying number;

(g) The location, with reference to established data, of the horizontal boundaries of each unit and that unit's identifying number;

(g.5) Any units in which the declarant has reserved the right to create additional units or common elements, identified appropriately;

(h) A legally sufficient description of any real estate in which the unit owners will own only an estate for years;

(i) The distance between noncontiguous parcels of real estate comprising the common interest community; and

(j) The approximate location and dimensions of limited common elements, including porches, balconies, and patios, other than the limited common elements described in section 38-33.3-202 (1)(b) and (1)(d).

(3) (Deleted by amendment, L. 93, p. 648, § 12, effective April 30, 1993.)

(4) (Deleted by amendment, L. 2007, p. 1799, § 1, effective July 1, 2007.)

(5) Unless the declaration provides otherwise, the horizontal boundaries of any part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and maps.

(6) Upon exercising any development right, the declarant shall record an amendment to the declaration with respect to that real estate reflecting change as a result of such exercise necessary to conform to the requirements of subsections (1), (2), and (4) of this section or new certifications of maps previously recorded if those maps otherwise conform to the requirements of subsections (1), (2), and (4) of this section.

(7) Any certification of a map required by this article must be made by a registered land surveyor.

(8) The requirements of a plat or map under this article shall not be deemed to satisfy any subdivision platting requirement enacted by a county or municipality pursuant to section 30-28-133, C.R.S., part 1 of article 23 of title 31, C.R.S., or a similar provision of a home rule city, nor shall the plat or map requirements under this article be deemed to be incorporated into any subdivision platting requirements enacted by a county or municipality.

(9) Any plat or map that was recorded on or after July 1, 1998, but prior to July 1, 2007, and that satisfies the requirements of this section in effect on July 1, 2007, is deemed to have satisfied the requirements of this section at the time it was recorded.

Source: L. 91: Entire article added, p. 1721, § 1, effective July 1, 1992. **L. 93:** (2)(a), (2)(f), (2)(g), (3), and (4)(b) amended, p. 648, § 12, effective April 30. **L. 94:** IP(2) amended, p. 1510, § 45, effective July 1. **L. 97:** IP(2) amended, p. 151, § 3, effective March 28. **L. 98:** (1), IP(2), (6), and (7) amended, p. 480, § 6, effective July 1. **L. 2007:** (1), (2), and (4) amended and (9) added, p. 1799, § 1, effective July 1.

ANNOTATION

The 1998 amendment to subsection (1) did not eliminate the need to file a plat or a map even if all pertinent information was contained in the declaration, because § 38-33.3-201 (1) still provides that no common interest community is created until

the plat or map for the common interest community is recorded. Snowmass Land Co. v. Two Creeks Homeowner's Ass'n, 159 P.3d 662 (Colo. App. 2006).

Airplane runway and retained easement across the runway were not required to be depicted on a subdivision plat pursuant to subsections (2)(b) and (2)(e) because the runway was not a dedicated common area subject to the subdivision declarations and the easement therefore did not burden any part of the subdivision. Brush Creek Airport, L.L.C. v. Avion Park, L.L.C., 57 P.3d 738 (Colo. App. 2002).

The description on a plat that simply stated "Parcel A, Lot 3", in conjunction with the attached notes, failed to adequately label the plat or map to identify the development rights applicable to that parcel, as required by subsection (2)(c). Snowmass Land Co. v. Two Creeks Homeowner's Ass'n, 159 P.3d 662 (Colo. App. 2006).

Section does not require duplicative language in every plat amending a declaration if a sufficient description of all easements appears in the declaration or on a plat. Reference to the roads being for the benefit of the developer and "adjacent subdivisions" in the plat amending the declaration was sufficient to create easement for property adjacent to the subdivision. Kroesen v. Shenandoah Homeowners Ass'n, 2020 COA 31, 461 P.3d 672.

38-33.3-209.2. Declarant duties - reserve study.

(1) Prior to transfer of control from the declarant to the association of a planned community or condominium, the declarant shall commission and pay for a reserve study for the planned community or condominium, which study addresses the components of the common elements and property that the association is responsible for maintaining, repairing, or replacing, as described in the declaration. The reserve study must project costs over a thirty-year period.

(2) The reserve study described in subsection (1) of this section must include an estimate of the projected cost of maintaining, repairing, or replacing the common elements or property of the planned community or condominium.

(3) A reserve study required pursuant to this section must be conducted by an independent reserve study professional or other qualified professional that:

(a) Has knowledge of industry standards for reserve studies;

(b) Has no business relationship with or financial interest in the declarant, other than being retained by the declarant to conduct reserve studies; and

(c) Is not an affiliate of the declarant.

Source: L. 2026: Entire section added, (HB 26-1099), ch. 42, p. 195, § 1, effective August 12.

38-33.3-209.4. Public disclosures required - identity of association - agent - manager - contact information.

(1) 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;

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

(d) 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.

(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:

(a) The date on which its fiscal year commences;

(b) Its operating budget for the current fiscal year;

(c) A list, by unit type, of the association's current assessments, including both regular and special assessments;

(d) Its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;

(e) The results of its most recent available financial audit or review;

(f) A list of all association insurance policies, including, but not limited to, property, general liability, association director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed.

(g) All the association's bylaws, articles, and rules and regulations;

(h) The minutes of the executive board and member meetings for the fiscal year immediately preceding the current annual disclosure;

(i) The association's responsible governance policies adopted under section 38-33.3-209.5; and

(j) The most recent reserve study required pursuant to section 38-33.3-209.2.

(3) It is the intent of this section to allow the association the widest possible latitude in methods and means of disclosure, while requiring that the information be readily available at no cost to unit owners at their convenience. Disclosure shall be accomplished by one of the following means: Posting on an internet web page with accompanying notice of the web address via first-class mail or email; the maintenance of a literature table or binder at the association's principal place of business; or mail or personal delivery. The cost of such distribution shall be accounted for as a common expense liability.

(4) Notwithstanding section 38-33.3-117 (1.5)(c), this section shall not apply to a unit, or the owner thereof, if the unit is a time-share unit, as defined in section 38-33-110 (7).

Source: L. 2005: Entire section added, p. 1377, § 7, effective January 1, 2006. **L. 2006:** (1) and (2)(e) amended, p. 1218, § 6, effective May 26. **L. 2013:** (4) amended, (HB 13-1300), ch. 316, p. 1699, § 115, effective August 7; (1)(b) amended, (HB 13-1277), ch. 352, p. 2040, § 1, effective January 1, 2015. **L. 2020:** (1)(b) amended, (HB 20-1402), ch. 216, p. 1057, § 65, effective June 30. **L. 2026:** (2)(h) and (2)(i) amended and (2)(j) added, (HB 26-1099), ch. 42, p. 196, § 2, effective August 12.

38-33.3-209.5. Responsible governance policies - due process for imposition of fines - procedure for collection of delinquent accounts - enforcement through small claims court - definitions.

(1) To promote responsible governance, associations shall:

(a) Maintain accurate and complete accounting records; and

(a.5) Request periodically from a unit owner or designated contact, and maintain in the association's records for purposes of providing notice to the unit owner as required pursuant to this section and this title 38, a telephone number for phone calls, a cellular number for texts, and an email address for emails;

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

(I) Collection of unpaid assessments;

(II) Handling of conflicts of interest involving board members, which policies, procedures, and rules and regulations must include, at a minimum, the criteria described in subsection (4) of this section;

(III) Conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;

(IV) Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines;

(V) Inspection and copying of association records by unit owners;

(VI) Investment of reserve funds;

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

(VIII) Procedures for addressing disputes arising between the association and unit owners; and

(IX) When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial analysis. For the purposes of this subparagraph (IX), an internally conducted reserve study shall be sufficient.

(1.7) (a) With regard to a unit owner's delinquency in paying assessments, fines, or fees, an association shall:

(I) First contact the unit owner to alert the unit owner of the delinquency before taking action in relation to the delinquency pursuant to subsection (1.7)(a)(II) of this section and shall maintain a record of any contact, including information regarding the type of communication used to contact the unit owner and the date and time that the contact was made. Any contact that a community association manager or a property management company makes on behalf of an association pursuant to this subsection (1.7)(a) is deemed a contact made by the association and not by a debt collector as defined in section 5-16-103 (9). A unit owner may identify another person to serve as a designated contact for the unit owner to be contacted on the unit owner's behalf for purposes of this subsection (1.7)(a)(I). A unit owner may also notify the association if the unit owner prefers that correspondence and notices from the association be made in a language other than English. If a preference is not indicated, the association shall send the correspondence and notices in English. The unit owner and the unit owner's designated contact must receive the same correspondence and notices any time communications are sent out; except that the unit owner must receive the correspondence and notices in the language for which the

unit owner has indicated a preference, if any. An association may determine the manner in which a unit owner may identify a designated contact. In contacting the unit owner or a designated contact, an association shall send the same type of notice of delinquency required to be sent pursuant to subsection (5)(a)(V) of this section, including sending it by certified mail, return receipt requested. In addition, the association shall contact the unit owner or designated contact by two of the following means:

(A) Telephone call to a telephone number that the association has on file because the unit owner or designated contact has provided the number to the association. If the association attempts to contact the unit owner or designated contact by telephone but is unable to contact the unit owner or designated contact, the association shall, if possible, leave a voice message for the unit owner or designated contact.

(B) Text message to a cellular number that the association has on file because the unit owner or designated contact has provided the cellular number to the association;

(C) Email to an email address that the association has on file because the unit owner or designated contact has provided the email address to the association; or

(D) By regular mail, if the unit owner or designated contact has not provided a telephone number, cellular number, or email address as additional means by which to receive notices.

(II) Refer a delinquent account to a collection agency or attorney only if a majority of the executive board votes to refer the matter in a recorded vote at a meeting conducted pursuant to section 38-33.3-308 (4)(e). A community association management or property management company acting on behalf of the association shall not refer a delinquent account to a collection agency or an attorney unless a majority of the executive board votes to refer the matter in a recorded vote at a meeting conducted pursuant to section 38-33.3-308 (4)(e).

(b) (I) An association shall not impose the following on a daily basis against a unit owner:

(A) Late fees; or

(B) Fines assessed for violations of the declaration, bylaws, covenants, or other governing documents of the association. An association may only impose fines for violations in accordance with this subsection (1.7)(b).

(II) (A) With respect to any violation of the declaration, bylaws, covenants, or other governing documents of an association that the association reasonably determines threatens the public safety or health, the association shall provide the unit owner written notice, in English and in any language that the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section, of the violation informing the unit owner that the unit owner has seventy-two hours to cure the violation or the association may fine the unit owner.

(B) If, after an inspection of the unit, the association determines that the unit owner has not cured the violation within seventy-two hours after receiving the notice, the association may impose fines on the unit owner every other day and may take legal action against the unit owner for the violation; except that, in accordance with subsection (8)(c)(I) of this section, the association shall not pursue foreclosure against the unit owner based on fines owed.

(III) (A) If an association reasonably determines that a unit owner committed a violation of the declaration, bylaws, covenants, or other governing documents of the association, other than a violation that threatens the public safety or health, the association shall, through certified mail, return receipt requested, provide the unit owner written notice, in English and in any language that the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section, of the violation informing the unit owner that the unit owner has thirty days to cure the violation or the association, after conducting an inspection and determining that the unit owner has not cured the violation, may fine the unit owner; however, the total amount of fines imposed for the violation may not exceed five hundred dollars.

(B) An association shall grant a unit owner two consecutive thirty-day periods to cure a violation before the association may take legal action against the unit owner for the violation. In accordance with subsection (8)(c)(I) of this section, an association shall not pursue foreclosure against the unit owner based on fines owed.

(IV) If the unit owner cures the violation within the period to cure afforded the unit owner, the unit owner may notify the association of the cure and, if the unit owner sends with the notice visual evidence that the violation has been cured, the violation is deemed cured on the date that the unit owner sends the notice. If the unit owner's notice does not include visual evidence that the violation has been cured, the association shall inspect the unit as soon as practicable to determine if the violation has been cured.

(V) If the association does not receive notice from the unit owner that the violation has been cured, the association shall inspect the unit within seven days after the expiration of the thirty-day cure period to determine if the violation has been cured. If, after the inspection and whether or not the association received notice from the unit owner that the violation was cured, the association determines that the violation has not been cured:

(A) A second thirty-day period to cure commences if only one thirty-day period to cure has elapsed; or

(B) The association may take legal action pursuant to this section if two thirty-day periods to cure have elapsed.

(VI) Once the unit owner cures a violation, the association shall notify the unit owner, in English and in any language that the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section:

(A) That the unit owner will not be further fined with regard to the violation; and

(B) Of any outstanding fine balance that the unit owner still owes the association.

(c) On a monthly basis and by first-class mail and, if the association has the relevant email address, by email, an association shall send to each unit owner who has any outstanding balance owed the association an itemized list of all assessments, fines, fees, and charges that the unit owner owes to the association. The association shall send the itemized list to the unit owner in English or in any language for which the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section and to any designated contact for the unit owner.

(2) Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary, the association may not fine any unit owner for an alleged violation unless:

(a) The association has adopted and follows a written policy governing the imposition of fines;

(b) (I) The policy includes a fair and impartial fact-finding process concerning whether the alleged violation actually occurred and whether the unit owner is the one who should be held responsible for the violation. This process may be informal but shall, at a minimum, guarantee the unit owner notice and an opportunity to be heard before an impartial decision maker.

(II) As used in this paragraph (b), "impartial decision maker" means a person or group of persons who have the authority to make a decision regarding the enforcement of the association's covenants, conditions, and restrictions, including its architectural requirements, and the other rules and regulations of the association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the association.

(c) The policy:

(I) Requires notice regarding the nature of the alleged violation, the action or actions required to cure the alleged violation, and the timeline for the fair and impartial fact-finding process required under subsection (2)(b) of this section. The association may send the unit owner the notice required under this subsection (2)(c)(I) in accordance with subsection (1.7)(a) of this section.

(II) Specifies the interval upon which fines may be levied in accordance with subsection (1.7)(b) of this section for violations that are continuing in nature.

(3) If, as a result of the fact-finding process described in subsection (2) of this section, it is determined that the unit owner should not be held responsible for the alleged violation, the

association shall not allocate to the unit owner's account with the association any of the association's costs or attorney fees incurred in asserting or hearing the claim. Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, a unit owner shall not be deemed to have consented to pay such costs or fees.

(4) (a) The policies, procedures, and rules and regulations adopted by an association under subparagraph (II) of paragraph (b) of subsection (1) of this section must, at a minimum:

(I) Define or describe the circumstances under which a conflict of interest exists;

(II) Set forth procedures to follow when a conflict of interest exists, including how, and to whom, the conflict of interest must be disclosed and whether a board member must recuse himself or herself from discussing or voting on the issue; and

(III) Provide for the periodic review of the association's conflict of interest policies, procedures, and rules and regulations.

(b) The policies, procedures, or rules and regulations adopted under this subsection (4) must be in accordance with section 38-33.3-310.5.

(5) (a) Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary or the absence of a relevant provision in the declaration, bylaws, articles, or rules or regulations, the association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, shall not use a collection agency or take legal action to collect unpaid assessments unless the association or a holder or assignee of the association's debt has adopted and follows a written policy governing the collection of unpaid assessments and unless the association complies with subsection (7) of this section. The policy must, at a minimum, specify:

(I) The date on which assessments must be paid to the entity and when an assessment is considered past due and delinquent;

(II) Any late fees and interest the entity is entitled to impose on a delinquent unit owner's account;

(III) Any returned-check charges the entity is entitled to impose;

(IV) The circumstances under which a unit owner is entitled to enter into a payment plan with the entity pursuant to section 38-33.3-316.3 and the minimum terms of the payment plan mandated by that section;

(V) That, before the entity turns over a delinquent account of a unit owner to a collection agency or refers it to an attorney for legal action, the entity must send the unit owner a notice of delinquency, by certified mail, return receipt requested, specifying:

(A) The total amount due, with an accounting of how the total was determined;

(B) Whether the opportunity to enter into a payment plan exists pursuant to section 38-33.3-316.3 and instructions for contacting the entity to enter into such a payment plan;

(C) The name and contact information for the individual the unit owner may contact to request a copy of the unit owner's ledger in order to verify the amount of the debt, which copy of the ledger must be provided to the unit owner no later than seven business days after receipt of the unit owner's request;

(D) That action is required to cure the delinquency and that failure to do so within thirty days may result in the unit owner's delinquent account being turned over to a collection agency, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the unit owner's property, the sale of the unit owner's unit at auction to pay delinquent assessments, which could result in the unit owner losing some or all of the unit owner's equity in the unit, or other remedies available under Colorado law; and

(E) The availability of, and instructions on how to access, free online information through the HOA information and resource center created in section 12-10-801 (1) relating to the collection of assessments by an association, including the association's ability to foreclose an association lien for unpaid assessments and force the sale of the unit owner's home, and the availability of online information from the federal department of housing and urban development concerning credit counseling before foreclosure that may be accessed through a link on the department of local affairs' website.

(VI) The method by which payments may be applied on the delinquent account of a unit owner; and

(VII) The legal remedies available to the entity to collect on a unit owner's delinquent account pursuant to the governing documents of the entity and Colorado law.

(b) As used in this subsection (5), "entity" means an association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person.

(6) A notice of delinquency that an association sends to a unit owner for unpaid assessments, fines, fees, or charges must:

(a) Be written in English and in any language that the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section;

(b) Specify whether the delinquency concerns unpaid assessments; unpaid fines, fees, or charges; or both unpaid assessments and unpaid fines, fees, or charges, and, if the notice of delinquency concerns unpaid assessments, the notice of delinquency must notify the unit owner that unpaid assessments may lead to foreclosure; and

(c) Include:

(I) A description of the steps the association must take before the association may take legal action against the unit owner, including a description of the association's cure process established in accordance with subsection (1.7)(b) of this section; and

(II) A description of what legal action the association may take against the unit owner, including a description of the types of matters that the association or unit owner may take to small claims court, including injunctive matters for which the association seeks an order requiring the unit owner to comply with the declaration, bylaws, covenants, or other governing documents of the association.

(7) (a) An association shall not commence a legal action to initiate a judicial foreclosure proceeding based on a unit owner's delinquency in paying assessments unless:

(I) The association has complied with each of the requirements in this section and in sections 38-33.3-316 and 38-33.3-316.3 related to a unit owner's delinquency in paying assessments;

(II) The association has provided the unit owner with a written offer to enter into a repayment plan pursuant to section 38-33.3-316.3 (2) that authorizes the unit owner to repay the debt in monthly installments over eighteen months. Under the repayment plan, the unit owner may choose the amount to be paid each month, so long as each payment must be in an amount of at least twenty-five dollars until the balance of the amount owed is less than twenty-five dollars; and

(III) After the association has provided the owner with a written offer to enter into a repayment plan, the unit owner has either:

(A) Failed to accept the repayment plan within thirty days after the written offer was made; or

(B) After accepting the repayment plan, failed to pay at least three of the monthly installments within fifteen days after the monthly installments were due.

(b) A unit owner who has entered into a repayment plan pursuant to subsection (7)(a) of this section may elect to pay the remaining balance owed under the repayment plan at any time during the duration of the repayment plan.

(8) An association shall not:

(a) Charge a rate of interest on unpaid assessments, fines, or fees in an amount greater than eight percent per year;

(b) Assess a fee or other charge to recover costs incurred for providing the unit owner a statement of the total amount that the unit owner owes; or

(c) Foreclose on an assessment lien if the debt securing the lien consists only of one or both of the following:

(I) Fines that the association has assessed against the unit owner; or

(II) Collection costs or attorney fees that the association has incurred and that are only associated with assessed fines.

(9) A party seeking to enforce rights and responsibilities arising under the declaration, bylaws, covenants, or other governing documents of an association in relation to disputes arising from assessments, fines, or fees owed to the association and for which the amount at issue does not exceed seven thousand five hundred dollars, exclusive of interest and costs, may file a claim in small claims court pursuant to section 13-6-403 (1)(b)(I).

(10) As used in this section, "notice of delinquency" means a written notice that an association sends to a unit owner to notify the unit owner of any unpaid assessments, fines, fees, or charges that the unit owner owes the association.

(11) With respect to any notices or other documentation that an association sends a unit owner through certified mail pursuant to this section or section 38-33.3-316 (8), the association may charge the unit owner an amount not to exceed the actual cost of the certified mail.

(12) This section, as amended by House Bill 22-1137, enacted in 2022, does not apply to the collection of delinquent payments of assessments, fines, or fees from a unit owner who owns a time share unit, as defined in section 38-33-110 (7), that is not occupied by residents on a full-time basis.

Source: L. 2005: Entire section added, p. 1377, § 7, effective January 1, 2006. **L. 2006:** (1)(a), (1)(b)(VI), and (1)(b)(VII) amended and (1)(b)(VIII) added, p. 1219, § 7, effective May 26. **L. 2008:** (2) and (3) added, p. 556, § 2, effective July 1. **L. 2009:** (1)(b)(IX) added, (HB 09-1359), ch. 257, p. 1164, § 1, effective August 5. **L. 2011:** (1)(b)(II) amended and (4) added, (HB 11-1124), ch. 105, p. 328, § 2, effective April 13. **L. 2013:** (5) added, (HB 13-1276), ch. 351, p. 2035, § 1, effective January 1, 2014. **L. 2022:** (1.7), (2)(c), (6), (7), (8), (9), and (10) added and (2)(a), IP(5)(a), and IP(5)(a)(V) amended, (HB 22-1137), ch. 367, p. 2610, § 1, effective August 10. **L. 2024:** (1.7)(a)(I) amended and (11) and (12) added, (HB 24-1233), ch. 334, p. 2270, § 1, effective August 7; IP(7)(a), (7)(a)(I), IP(7)(a)(III), and (7)(a)(III)(A) amended, (HB 24-1337), ch. 422, p. 2882, § 2, effective August 7. **L. 2025:** (1)(a.5), (1.7)(a)(I)(D), and (5)(a)(V)(E) added and IP(5)(a), (5)(a)(V)(C), and (5)(a)(V)(D) amended, (HB 25-1043), ch. 433, p. 2498, § 3, effective October 1.

38-33.3-209.6. Executive board member education.

The board may authorize, and account for as a common expense, reimbursement of board members for their actual and necessary expenses incurred in attending educational meetings and

seminars on responsible governance of unit owners' associations. The course content of such educational meetings and seminars shall be specific to Colorado, and shall make reference to applicable sections of this article.

Source: L. 2005: Entire section added, p. 1377, § 7, effective January 1, 2006.

38-33.3-209.7. Owner education.

(1) The association shall provide, or cause to be provided, education to owners at no cost on at least an annual basis as to the general operations of the association and the rights and responsibilities of owners, the association, and its executive board under Colorado law. The criteria for compliance with this section shall be determined by the executive board.

(2) Notwithstanding section 38-33.3-117 (1.5)(c), this section shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

Source: L. 2005: Entire section added, p. 1377, § 7, effective January 1, 2006.

38-33.3-210. Exercise of development rights.

(1) To exercise any development right reserved under section 38-33.3-205 (1)(h), the declarant shall prepare, execute, and record an amendment to the declaration and, in a condominium or planned community, comply with the provisions of section 38-33.3-209. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created and, except in the case of subdivision or conversion of units described in subsection (3) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 38-33.3-208.

(2) Additional development rights not previously reserved may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by section 38-33.3-205 or 38-33.3-206, as the case may be, and, in a condominium or planned community, the plats and maps include all matters required by section 38-33.3-209. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 38-33.3-205 (1)(h).

(3) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; and

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(4) If the declaration provides, pursuant to section 38-33.3-205, that all or a portion of the real estate is subject to a right of withdrawal:

(a) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(b) If any portion of the real estate is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

(5) If a declarant fails to exercise any development right within the time limit and in accordance with any conditions or fixed limitations described in the declaration pursuant to section 38-33.3-205 (1)(h), or records an instrument surrendering a development right, that development right shall lapse unless the association, upon the request of the declarant or the owner of the real estate subject to development right, agrees to an extension of the time period for exercise of the development right or a reinstatement of the development right subject to whatever terms, conditions, and limitations the association may impose on the subsequent exercise of the development right. The extension or renewal of the development right and any terms, conditions, and limitations shall be included in an amendment executed by the declarant or the owner of the real estate subject to development right and the association.

Source: L. 91: Entire article added, p. 1723, § 1, effective July 1, 1992. **L. 93:** (5) amended, p. 648, § 13, effective April 30. **L. 98:** (2) amended, p. 481, § 7, effective July 1.

ANNOTATION

Compliance with this section required for annexation of property. Annexation of property, which adds real estate to a common interest community, is a development right as defined in § 38-33.3-103, and compliance with this section is thus required. Ryan Ranch Cmty. Ass'n v. Kelley, 2014 COA 37M, 409 P.3d 375, aff'd, 2016 CO 65, 380 P.3d 137.

Subsection (1) of this section applies only when a development right is reserved under § 38-33.3-205 (1)(h). Under

subsection (1) of this section, a declarant must prepare an amendment to exercise any development right reserved under § 38-33.3-205 (1)(h), which section describes what a declaration must contain and specifies that it must include a description of any development rights and other special declarant rights reserved by the declarant. Ryan Ranch Cmty. Ass'n v. Kelley, 2014 COA 37M, 409 P.3d 375, aff'd, 2016 CO 65, 380 P.3d 137.

The term "amendment" is not defined under the Colorado Common Interest Ownership Act. The term "amendment" is generally understood to mean a formal revision or addition proposed or made to a statute, constitution, pleading, order, or other instrument; specifically, a change made by addition, deletion, or correction. Ryan Ranch Cmty. Ass'n v. Kelley, 2014 COA 37M, 409 P.3d 375, aff'd on other grounds, 2016 CO 65, 380 P.3d 137.

Amendments necessary for annexation must also comply with § 38-33.3-217. Ryan Ranch Cmty. Ass'n, Inc. v. Kelley, 2016 CO 65, 380 P.3d 137.

Subsections (4)(a) and (4)(b) impose parallel restrictions on the right of withdrawal depending on whether a declaration divides the real estate into separate portions subject to that right. Subsection (4)(a) applies only if the declaration does not describe separate portions. Subsection (4)(b) thus applies if the declaration does describe separate portions that are subject to withdrawal. "Portion", as used in subsection (4)(b), must therefore refer to a described portion as used in subsection (4)(a). Vista Ridge Master Homeowners Ass'n v. Arcadia Holdings at Vista Ridge, LLC, 2013 COA 26, 300 P.3d 1004.

38-33.3-211. Alterations of units.

(1) Subject to the provisions of the declaration and other provisions of law, a unit owner:

(a) May make any improvements or alterations to his unit that do not impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the common interest community;

(b) May not change the appearance of the common elements without permission of the association; or

(c) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the common interest community. Removal of partitions or creation of apertures under this paragraph (c) is not an alteration of boundaries.

Source: L. 91: Entire article added, p. 1724, § 1, effective July 1, 1992.

38-33.3-212. Relocation of boundaries between adjoining units.

(1) Subject to the provisions of the declaration and other provisions of law, and pursuant to the procedures described in section 38-33.3-217, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units.

(2) In order to relocate the boundaries between adjoining units, the owners of those units, as the applicant, must submit an application to the executive board, which application shall be executed by those owners and shall include:

(a) Evidence sufficient to the executive board that the applicant has complied with all local rules and ordinances and that the proposed relocation of boundaries does not violate the terms of any document evidencing a security interest;

(b) The proposed reallocation of interests, if any;

(c) The proposed form for amendments to the declaration, including the plats or maps, as may be necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers;

(d) A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the executive board; and

(e) Such other information as may be reasonably requested by the executive board.

(3) No relocation of boundaries between adjoining units shall be effected without the necessary amendments to the declaration, plats, or maps, executed and recorded pursuant to section 38-33.3-217 (3) and (5).

(4) All costs and attorney fees incurred by the association as a result of an application shall be the sole obligation of the applicant.

Source: L. 91: Entire article added, p. 1725, § 1, effective July 1, 1992.

38-33.3-213. Subdivision of units.

(1) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, and pursuant to the

procedures described in this section, a unit owner may apply to the association to subdivide a unit.

(2) In order to subdivide a unit, the unit owner of such unit, as the applicant, must submit an application to the executive board, which application shall be executed by such owner and shall include:

(a) Evidence that the applicant of the proposed subdivision shall have complied with all building codes, fire codes, zoning codes, planned unit development requirements, master plans, and other applicable ordinances or resolutions adopted and enforced by the local governing body and that the proposed subdivision does not violate the terms of any document evidencing a security interest encumbering the unit;

(b) The proposed reallocation of interests, if any;

(c) The proposed form for amendments to the declaration, including the plats or maps, as may be necessary to show the units which are created by the subdivision and their dimensions, and identifying numbers;

(d) A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the executive board; and

(e) Such other information as may be reasonably requested by the executive board.

(3) No subdivision of units shall be effected without the necessary amendments to the declaration, plats, or maps, executed and recorded pursuant to section 38-33.3-217 (3) and (5).

(4) All costs and attorney fees incurred by the association as a result of an application shall be the sole obligation of the applicant.

Source: L. 91: Entire article added, p. 1726, § 1, effective July 1, 1992. **L. 98:** (1) amended, p. 481, § 8, effective July 1.

ANNOTATION

Subdivision requires recordation. Without executing and recording the necessary amendments to the condominium declaration, plats, or maps, there is no subdivision under this section. Physical marking of the boundaries of parking spots is insufficient. Perfect Place, LLC v. Semler, 2018 CO 74, 426 P.3d 325.

38-33.3-214. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and maps.

Source: L. 91: Entire article added, p. 1727, § 1, effective July 1, 1992.

38-33.3-215. Use for sales purposes.

A declarant may maintain sales offices, management offices, and models in the common interest community only if the declaration so provides. Except as provided in a declaration, any real estate in a common interest community used as a sales office, management office, or model and not designated a unit by the declaration is a common element. If a declarant ceases to be a unit owner, such declarant ceases to have any rights with regard to any real estate used as a sales office, management office, or model, unless it is removed promptly from the common interest community in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the common interest community. This section is subject to the provisions of other state laws and to local ordinances.

Source: L. 91: Entire article added, p. 1727, § 1, effective July 1, 1992. **L. 98:** Entire section amended, p. 481, § 9, effective July 1.

38-33.3-216. Easement rights.

(1) Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this article or reserved in the declaration.

(2) In a planned community, subject to the provisions of the declaration and the ability of the association to regulate and convey or encumber the common elements as set forth in sections 38-33.3-302 (1)(f), 38-33.3-302.5, and 38-33.3-312, the unit owners have an easement:

(a) In the common elements for the purpose of access to their units; and

(b) To use the common elements and all other real estate that must become common elements for all other purposes.

Source: L. 91: Entire article added, p. 1727, § 1, effective July 1, 1992. **L. 2022:** IP(2) amended, (HB 22-1040), ch. 93, p. 449, § 4, effective August 10.

38-33.3-217. Amendment of declaration.

(1) (a) (I) Except 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 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) 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.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Any amendment to a declaration that adds real estate to a common interest community must be executed by or with the express written authorization of the owner or owners of the real estate to be added, as shown by the records of the county clerk and recorder's office of the county where the real estate is located. Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation. An amendment must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the amendment.

(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.

(4.5) Except to the extent expressly permitted or required by other provisions of this article, no amendment may change the uses to which any unit is restricted 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 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.

(5) Amendments to the declaration required by this article to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) All expenses associated with preparing and recording an amendment to the declaration shall be the sole responsibility of:

(a) In the case of an amendment pursuant to sections 38-33.3-208 (2), 38-33.3-212, and 38-33.3-213, the unit owners desiring the amendment; and

(b) In the case of an amendment pursuant to section 38-33.3-208 (3), 38-33.3-209 (6), or 38-33.3-210, the declarant; and

(c) In all other cases, the association.

(7) (a) The association, acting through its executive board pursuant to section 38-33.3-303 (1), may petition the district court for any county that includes all or any portion of the common interest community for an order amending the declaration of the common interest community if:

(I) The association has twice sent notice of the proposed amendment to all unit owners that are entitled by the declaration to vote on the proposed amendment or are required for approval of the proposed amendment by any means allowed pursuant to the provisions regarding notice to members in sections 7-121-402 and 7-127-104, C.R.S., of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S.;

(II) The association has discussed the proposed amendment during at least one meeting of the association; and

(III) Unit owners of units to which are allocated more than fifty percent of the number of consents, approvals, or votes of the association that would be required to adopt the proposed amendment pursuant to the declaration have voted in favor of the proposed amendment.

(b) A petition filed pursuant to paragraph (a) of this subsection (7) shall include:

(I) A summary of:

(A) The procedures and requirements for amending the declaration that are set forth in the declaration;

(B) The proposed amendment to the declaration;

(C) The effect of and reason for the proposed amendment, including a statement of the circumstances that make the amendment necessary or advisable;

(D) The results of any vote taken with respect to the proposed amendment; and

(E) Any other matters that the association believes will be useful to the court in deciding whether to grant the petition; and

(II) As exhibits, copies of:

(A) The declaration as originally recorded and any recorded amendments to the declaration;

(B) The text of the proposed amendment;

(C) Copies of any notices sent pursuant to subparagraph (I) of paragraph (a) of this subsection (7); and

(D) Any other documents that the association believes will be useful to the court in deciding whether to grant the petition.

(c) Within three days of the filing of the petition, the district court shall set a date for hearing the petition. Unless the court finds that an emergency requires an immediate hearing, the hearing shall be held no earlier than forty-five days and no later than sixty days after the date the association filed the petition.

(d) No later than ten days after the date for hearing a petition is set pursuant to paragraph (c) of this subsection (7), the association shall:

(I) Send notice of the petition by any written means allowed pursuant to the provisions regarding notice to members in sections 7-121-402 and 7-127-104, C.R.S., of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., to any unit owner, by first-class mail, postage prepaid or by hand delivery to any declarant, and by first-class mail, postage prepaid, to any lender that holds a security interest in one or more units and is entitled by the declaration or any underwriting guidelines or requirements of that lender or of the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, or the government national mortgage corporation to vote on the proposed amendment. The notice shall include:

(A) A copy of the petition which need not include the exhibits attached to the original petition filed with the district court;

(B) The date the district court will hear the petition; and

(C) A statement that the court may grant the petition and order the proposed amendment to the declaration unless any declarant entitled by the declaration to vote on the proposed

amendment, the federal housing administration, the veterans administration, more than thirty-three percent of the unit owners entitled by the declaration to vote on the proposed amendment, or more than thirty-three percent of the lenders that hold a security interest in one or more units and are entitled by the declaration to vote on the proposed amendment file written objections to the proposed amendment with the court prior to the hearing;

(II) File with the district court:

(A) A list of the names and mailing addresses of declarants, unit owners, and lenders that hold a security interest in one or more units and that are entitled by the declaration to vote on the proposed amendment; and

(B) A copy of the notice required by subparagraph (I) of this paragraph (d).

(e) The district court shall grant the petition after hearing if it finds that:

(I) The association has complied with all requirements of this subsection (7);

(II) No more than thirty-three percent of the unit owners entitled by the declaration to vote on the proposed amendment have filed written objections to the proposed amendment with the court prior to the hearing;

(III) Neither the federal housing administration nor the veterans administration is entitled to approve the proposed amendment, or if so entitled has not filed written objections to the proposed amendment with the court prior to the hearing;

(IV) Either the proposed amendment does not eliminate any rights or privileges designated in the declaration as belonging to a declarant or no declarant has filed written objections to the proposed amendment with the court prior to the hearing;

(V) Either the proposed amendment does not eliminate any rights or privileges designated in the declaration as belonging to any lenders that hold security interests in one or more units and that are entitled by the declaration to vote on the proposed amendment or no more than thirty-three percent of such lenders have filed written objections to the proposed amendment with the court prior to the hearing; and

(VI) The proposed amendment would neither terminate the declaration nor change the allocated interests of the unit owners as specified in the declaration, except as allowed pursuant to section 38-33.3-315.

(f) Upon granting a petition, the court shall enter an order approving the proposed amendment and requiring the association to record the amendment in each county that includes all or any portion of the common interest community. Once recorded, the amendment shall have the same legal effect as if it were adopted pursuant to any requirements set forth in the declaration.

Source: L. 91: Entire article added, p. 1727, § 1, effective July 1, 1992. **L. 93:** (1) amended, p. 649, § 14, effective April 30. **L. 98:** (1) and (4) amended and (4.5) added, p. 482, § 10, effective July 1. **L. 99:** (1) amended and (7) added, p. 692, § 1, effective May 19; (1) amended, p. 629, § 38, effective August 4. **L. 2005:** (1) amended, p. 1380, § 8, effective June 6. **L. 2006:** (1) and (4) amended, p. 1219, § 8, effective May 26. **L. 2024:** (3) amended, (HB 24-1383), ch. 182, p. 983, § 3, effective August 7.

Editor's note: Amendments to subsection (1) by Senate Bill 99-221 and House Bill 99-1360 were harmonized.

Cross references: For the legislative declaration in HB 24-1383, see section 1 of chapter 182, Session Laws of Colorado 2024.

ANNOTATION

Law reviews. For article, "The State of Short-Term Rentals in Colorado", see 51 Colo. Law. 34 (Apr. 2022). For article, "Terminating Common Interest Communities with Horizontal Boundaries under CCIOA", see 51 Colo. Law. 40 (June 2022).

Requiring a declarant's consent to amend a declaration does not violate subsection (1). The declarant consent requirement does not exceed the sixty-seven percent limit on the maximum number of unit owners required to amend a declaration; rather, it is a separate and additional requirement that is permissible under the statute. Vallagio at Inverness v. Metro. Homes, 2015 COA 65, 412 P.3d 709, aff'd, 2017 CO 69, 395 P.3d 788.

Consent of lenders is also a permissible requirement. DA Mtn. Rentals v. Lodge at Lionshead, 2016 COA 141, 409 P.3d 564.

When declaration may require more than sixty-seven percent maximum percentage. Changes in the allocated interests of a unit, for example, "the undivided interests in and to the general common elements appurtenant to each unit", are among those for which subsection (4)(a) allows the declaration to require greater than a sixty-seven percent vote. Therefore, the declaration's requirement for unanimous consent applies to this provision despite the adoption of amendments to other provisions by a two-thirds vote. DA Mtn. Rentals v. Lodge at Lionshead, 2016 COA 141, 409 P.3d 564; Francis v. Aspen Mtn. Condo. Ass'n, 2017 COA 19, 401 P.3d 125.

The phrase in subsection (4)(a), "or any larger percentage the declaration specifies", recognizes the continued validity of any pre-Colorado Common Interest Ownership Act declaration requirement for a voting threshold in excess of sixty-seven percent in order to change the allocated interest of a unit. Such alterations of property interests are much more consequential than the goals of efficiency and flexibility that are deemed sufficiently protected by the sixty-seven percent threshold referenced in subsection (1)(a)(I). Francis v. Aspen Mtn. Condo. Ass'n, 2017 COA 19, 401 P.3d 125.

Because subsections (4) and (4.5) use the term "any unit", rather than "all units", and regardless of what owner approval percentage may be required procedurally, substantively subsections (4) and (4.5) permit changes to building and access envelopes of less than all the lots in a common interest community. Giguere v. SJS Family Enters., 155 P.3d 462 (Colo. App. 2006).

Although subsection (4.5) governs situations where homeowners would like to change an enumerated use to which a lot is restricted, it does not operate to preclude homeowners from seeking to create a new use restriction or to remove a specifically permitted land use pursuant to the terms of a declaration. Good v. Bear Canyon Ranch Ass'n, 160 P.3d 251 (Colo. App. 2007).

This section contains no time limit, but time limits in corporate law may apply. Where an association was organized as a nonprofit corporation, the sixty-day time period specified in § 7-127-107 of the nonprofit corporation statutes governed the procedure for adoption of a proposal to amend a declaration without a meeting. Triple Crown v. Vill. Homes of Colo., 2013 COA 150M, 328 P.3d 275.

Subsection (7) incorporates all applicable meeting notice requirements. Where the proposed amendments were allegedly discussed at a meeting, but the notice of that meeting was not sufficient under § 38-33.3-308 (1), the court could not find that "[t]he association [had] complied with all requirements of this subsection (7)." Tyra Summit Condos. II Ass'n, Inc. v. Clancy, 2017 COA 73, 413 P.3d 352.

38-33.3-218. Termination of common interest community.

(1) Except in the case of a taking of all the units by eminent domain, or in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, a common interest community may be terminated only by agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the common interest community are restricted exclusively to nonresidential uses.

(1.5) No planned community that is required to exist pursuant to a development or site plan shall be terminated by agreement of unit owners, unless a copy of the termination agreement is sent by certified mail or hand delivered to the governing body of every municipality in which a portion of the planned community is situated or, if the planned community is situated in an unincorporated area, to the board of county commissioners for every county in which a portion of the planned community is situated.

(2) An agreement of unit owners to terminate must be evidenced by their execution of a termination agreement or ratifications thereof in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(3) In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all of the common elements and units of the common interest community must be sold following termination. If, pursuant to the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) In the case of a condominium or planned community containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or all the unit owners consent to the sale.

(5) Subject to the provisions of a termination agreement described in subsections (3) and (4) of this section, the association, on behalf of the unit owners, may contract for the sale of real estate in a common interest community following termination, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all the powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all the powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in accordance with subsections (8), (9), and (10) of this section, taking into account the value of property owned or distributed that is not sold so as to preserve the proportionate interests of each unit owner with respect to all property cumulatively. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of

that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this article or the declaration.

(6) (a) In a planned community, if all or a portion of the common elements are not to be sold following termination, title to the common elements not sold vests in the unit owners upon termination as tenants in common in fractional interests that maintain, after taking into account the fair market value of property owned and the proceeds of property sold, their respective interests as provided in subsection (10) of this section with respect to all property appraised under said subsection (10), and liens on the units shift accordingly.

(b) In a common interest community, containing units having horizontal boundaries described in the declaration, title to the units not to be sold following termination vests in the unit owners upon termination as tenants in common in fractional interests that maintain, after taking into account the fair market value of property owned and the proceeds of property sold, their respective interests as provided in subsection (10) of this section with respect to all property appraised under said subsection (10), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted such unit.

(7) Following termination of the common interest community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear.

(8) Upon termination of a condominium or planned community, creditors of the association who obtain a lien and duly record it in every county in which any portion of the common interest community is located are to be treated as if they had perfected liens on the units immediately before termination or when the lien is obtained and recorded, whichever is later.

(9) In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, upon termination, creditors of the association who obtain a lien and duly record it in every county in which any portion of the cooperative is located are to be treated as if they had perfected liens against the cooperative immediately before termination or when the lien is obtained and recorded, whichever is later. Unless the declaration provides that all creditors of the association have that priority:

(a) The lien of each creditor of the association which was perfected against the association before termination becomes, upon termination, a lien against each unit owner's interest in the unit as of the date the lien was perfected;

(b) Any other creditor of the association who obtains a lien and duly records it in every county in which any portion of the cooperative is located is to be treated upon termination as if the creditor had perfected a lien against each unit owner's interest immediately before termination or when the lien is obtained and recorded, whichever is later;

(c) The amount of the lien of an association's creditor described in paragraphs (a) and (b) of this subsection (9) against each unit owner's interest must be proportionate to the ratio which each unit's common expense liability bears to the common expense liability of all of the units;

(d) The lien of each creditor of each unit owner which was perfected before termination continues as a lien against that unit owner's unit as of the date the lien was perfected; and

(e) The assets of the association must be distributed to all unit owners and all lienholders as their interests may appear in the order described above. Creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

(10) The respective interests of unit owners referred to in subsections (5) to (9) of this section are as follows:

(a) Except as provided in paragraph (b) of this subsection (10), the respective interests of unit owners are the combined fair market values of their units, allocated interests, any limited common elements, and, in the case of a planned community, any tenant in common interest, immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within thirty days after distribution by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all unit owners are:

(I) In a condominium, their respective common element interests immediately before the termination;

(II) In a cooperative, their respective ownership interests immediately before the termination; and

(III) In a planned community, their respective common expense liabilities immediately before the termination.

(11) In a condominium or planned community, except as provided in subsection (12) of this section, foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community. Foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community other than withdrawable real estate does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real

estate does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment to the declaration excluding the real estate from the common interest community prepared, executed, and recorded by the association.

(12) In a condominium or planned community, if a lien or encumbrance against a portion of the real estate comprising the common interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common interest community. The board of directors shall reallocate interests as if the foreclosed section were taken by eminent domain by an amendment to the declaration prepared, executed, and recorded by the association.

Source: L. 91: Entire article added, p. 1728, § 1, effective July 1, 1992. **L. 93:** (1), (5), (6), (8), IP(9), (9)(b), and (10)(a) amended, p. 649, § 15, effective April 30. **L. 2005:** (1.5) added, p. 1246, § 1, effective August 8.

ANNOTATION

Law reviews. For article, "Terminating Common Interest Communities with Horizontal Boundaries under CCIOA", see 51 Colo. Law. 40 (June 2022).

38-33.3-219. Rights of secured lenders.

(1) The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to:

(a) Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board; or

(b) Prevent the association or the executive board from commencing, intervening in, or settling any solicitation or proceeding; or

(c) Prevent any insurance trustee or the association from receiving and distributing any insurance proceeds pursuant to section 38-33.3-313.

Source: L. 91: Entire article added, p. 1732, § 1, effective July 1, 1992.

ANNOTATION

Law reviews. For article, "Terminating Common Interest Communities with Horizontal Boundaries under CCIOA", see 51 Colo. Law. 40 (June 2022).

38-33.3-220. Master associations.

(1) If the declaration provides that any of the powers of a unit owners' association described in section 38-33.3-302 are to be exercised by or may be delegated to a master association, all provisions of this article applicable to unit owners' associations apply to any such master association except as modified by this section.

(2) Unless it is acting in the capacity of an association described in section 38-33.3-301, a master association may exercise the powers set forth in section 38-33.3-302 (1)(b) only to the extent such powers are expressly permitted to be exercised by a master association in the declarations of common interest communities which are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

(3) If the declaration of any common interest community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 38-33.3-303, 38-33.3-308, 38-33.3-309, 38-33.3-310, and 38-33.3-312 apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this article.

(5) Even if a master association is also an association described in section 38-33.3-301, the articles of incorporation and the declaration of each common interest community, the powers of which are assigned by the declaration or delegated to the master association, must provide that the executive board of the master association be elected after the period of declarant control, if any, in one of the following ways:

(a) All unit owners of all common interest communities subject to the master association may elect all members of the master association's executive board.

(b) All members of the executive boards of all common interest communities subject to the master association may elect all members of the master association's executive board.

(c) All unit owners of each common interest community subject to the master association may elect specified members of the master association's executive board.

(d) All members of the executive board of each common interest community subject to the master association may elect specified members of the master association's executive board.

Source: L. 91: Entire article added, p. 1733, § 1, effective July 1, 1992. **L. 98:** (1) amended, p. 482, § 11, effective July 1.

38-33.3-221. Merger or consolidation of common interest communities.

(1) Any two or more common interest communities of the same form of ownership, by agreement of the unit owners as provided in subsection (2) of this section, may be merged or consolidated into a single common interest community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant common interest community is the legal successor, for all purposes, of all of the preexisting common interest communities, and the operations and activities of all associations of the preexisting common interest communities are merged or consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(2) An agreement of two or more common interest communities to merge or consolidate pursuant to subsection (1) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting common interest communities following approval by owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. The agreement must be recorded in every county in which a portion of the common interest community is located and is not effective until recorded.

(3) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant common interest community either by stating the reallocations or the formulas upon which they are based.

Source: L. 91: Entire article added, p. 1734, § 1, effective July 1, 1992.

38-33.3-221.5. Withdrawal from merged common interest community.

(1) A common interest community that was merged or consolidated with another common interest community, or is party to an agreement to do so pursuant to section 38-33.3-221, may withdraw from the merged or consolidated common interest community or terminate the

agreement to merge or consolidate, without the consent of the other common interest community or communities involved, if the common interest community wishing to withdraw meets all of the following criteria:

(a) It is a separate, platted subdivision;

(b) Its unit owners are required to pay into two common interest communities or separate unit owners' associations;

(c) It is or has been a self-operating common interest community or association continuously for at least twenty-five years;

(d) The total number of unit owners comprising it is fifteen percent or less of the total number of unit owners in the merged or consolidated common interest community or association;

(e) Its unit owners have approved the withdrawal by a majority vote and the owners of units representing at least seventy-five percent of the allocated interests in the common interest community wishing to withdraw participated in the vote; and

(f) Its withdrawal would not substantially impair the ability of the remainder of the merged common interest community or association to:

(I) Enforce existing covenants;

(II) Maintain existing facilities; or

(III) Continue to exist.

(2) If an association has met the requirements set forth in subsection (1) of this section, it shall be considered withdrawn as of the date of the election at which its unit owners voted to withdraw.

Source: L. 2005: Entire section added, p. 1380, § 9, effective January 1, 2006.

38-33.3-222. Addition of unspecified real estate.

In a common interest community, if the right is originally reserved in the declaration, the declarant, in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration to add additional real estate to the common interest community without describing the location of that real estate in the original declaration; but the area of real estate added to the common interest community pursuant to this section may not exceed ten percent of the total area of real estate described in section 38-33.3-205 (1)(c) and (1)(h), and the declarant may not in any event increase the number of units in the

common interest community beyond the number stated in the original declaration pursuant to section 38-33.3-205 (1)(d), except as provided in section 38-33.3-217 (4).

Source: L. 91: Entire article added, p. 1735, § 1, effective July 1, 1992. **L. 98:** Entire section amended, p. 483, § 12, effective July 1.

38-33.3-223. Sale of unit - disclosure to buyer. (Repealed)

Source: L. 2005: Entire section added, p. 1381, § 10, effective January 1, 2006. **L. 2006:** Entire section repealed, p. 1225, § 14, effective May 26.

PART 3

MANAGEMENT OF THE COMMON INTEREST COMMUNITY

38-33.3-301. Organization of unit owners' association.

A unit owners' association shall be organized no later than the date the first unit in the common interest community is conveyed to a purchaser. The membership of the association at all times shall consist exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under section 38-33.3-218, or their heirs, personal representatives, successors, or assigns. The association shall be organized as a nonprofit, not-for-profit, or for-profit corporation or as a limited liability company in accordance with the laws of the state of Colorado; except that the failure of the association to incorporate or organize as a limited liability company will not adversely affect either the existence of the common interest community for purposes of this article or the rights of persons acting in reliance upon such existence, other than as specifically provided in section 38-33.3-316. Neither the choice of entity nor the organizational structure of the association shall be deemed to affect its substantive rights and obligations under this article.

Source: L. 91: Entire article added, p. 1735, § 1, effective July 1, 1992. **L. 98:** Entire section amended, p. 483, § 13, effective July 1. **L. 2005:** Entire section amended, p. 1382, § 11, effective January 1, 2006.

ANNOTATION

Choice of entity determines which corporate law will supplement this article. Where an association was organized as a nonprofit corporation, the sixty-day time period specified in the nonprofit corporation statutes governed the adoption of a proposal to amend a declaration without a meeting under § 38-33.3-217 (1)(a)(I), which itself contains no time limit. Triple Crown v. Vill. Homes of Colo., 2013 COA 150M, 328 P.3d 275.

An association may be formed by a unit owner if declarant fails to do so. Where the intent of the developer is clear and, especially where the declaration states that the covenants are to run with the land, the right to form the association also runs with the land. Moreover, owners are on notice that an owners' association, of which they are automatically members, can be formed, even after a delay, by another homeowner. DeJean v. Grosz, 2015 COA 74, 412 P.3d 733.

38-33.3-302. Powers of unit owners' association.

(1) Except as provided in subsections (2) and (3) of this section, and subject to the provisions of the declaration, the association, without specific authorization in the declaration, may:

(a) Adopt and amend bylaws and rules and regulations;

(b) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;

(c) Hire and terminate managing agents and other employees, agents, and independent contractors;

(d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community;

(e) Make contracts and incur liabilities;

(f) Regulate the use, maintenance, repair, replacement, and modification of common elements; except that, in regulating the use of common elements by unit owners, the association shall comply with section 38-33.3-302.5, including during the maintenance, repair, replacement, or modification of a common element;

(g) Cause additional improvements to be made as a part of the common elements;

(h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, subject to the following exceptions:

(I) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to section 38-33.3-312; and

(II) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to section 38-33.3-312;

(i) Grant easements, leases, licenses, and concessions through or over the common elements;

(j) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in section 38-33.3-202 (1)(b) and (1)(d);

(k) (I) Impose charges for late payment of assessments, recover reasonable attorney fees and other legal costs for collection of assessments and other actions to enforce the power of the association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association.

(II) The association may not levy fines against a unit owner for violations of declarations, bylaws, or rules of the association for failure to adequately water landscapes or vegetation for which the unit owner is responsible when water restrictions or guidelines from the local water district or similar entity are in place and the unit owner is watering in compliance with such restrictions or guidelines. The association may require proof from the unit owner that the unit owner is watering the landscape or vegetation in a manner that is consistent with the maximum watering permitted by the restrictions or guidelines then in effect.

(l) Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments;

(m) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

(o) Exercise any other powers conferred by the declaration or bylaws;

(p) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and

(q) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(3) (a) Any managing agent, employee, independent contractor, or other person acting on behalf of the association shall be subject to this article to the same extent as the association itself would be.

(b) Decisions concerning the approval or denial of a unit owner's application for architectural or landscaping changes shall be made in accordance with standards and procedures set forth in the declaration or in duly adopted rules and regulations or bylaws of the association, and shall not be made arbitrarily or capriciously.

(4) (a) The association's contract with a managing agent shall be terminable for cause without penalty to the association. Any such contract shall be subject to renegotiation.

(b) Notwithstanding section 38-33.3-117 (1.5)(g), this subsection (4) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

Source: L. 91: Entire article added, p. 1735, § 1, effective July 1, 1992. **L. 2005:** IP(1) amended and (3) and (4) added, p. 1382, § 12, effective January 1, 2006. **L. 2013:** (1)(k) amended, (SB 13-183), ch. 187, p. 758, § 4, effective May 10. **L. 2022:** (1)(f) amended, (HB 22-1040), ch. 93, p. 448, § 1, effective August 10.

ANNOTATION

Law reviews. For article, "The Construction Defect Action Reform Act", see 30 Colo. Law. 121 (Oct. 2001). For article, "Mitigating Potential Condo Conversion and Renovation Construction Defect Liabilities: Part 1", see 48 Colo. Law. 28 (Apr. 2019). For article, "In 'Case' You Missed It — 2020-21: Real Estate Case Law Highlights", see 51 Colo. Law. 44 (Jan. 2022).

Subsection (1)(d) authorizes an association to pursue damage claims on behalf of two or more unit owners regardless of whether individual units or common areas were damaged. Heritage Vill. Owners Ass'n v. Golden Heritage Investors, Ltd., 89 P.3d 513 (Colo. App. 2004).

This section confers standing upon unit owners' associations to pursue damages claims on behalf of two or more unit owners with respect to matters affecting their individual units. Yacht Club II Homeowners Ass'n v. A.C. Excavating, 94 P.3d 1177 (Colo. App. 2003), aff'd, 114 P.3d 862 (Colo. 2005).

A homeowner's association may recover from a successor developer or builder the entire cost of remediating construction defects in common areas where (1) the defects are attributable to the successor developer or builder; (2) two or more of the association's members purchased their homes directly from the successor developer or builder; and (3) those members have rights to use the common

areas — even if the successor developer or builder never owned the common areas. Brooktree Vill. Homeowners v. Brooktree, 2020 COA 165, 479 P.3d 86.

Subsection (1)(d) confers standing upon owner's common interest community association to defend litigation in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community. It does not establish the adequacy as a matter of law of the representation by an association of lot owners belonging to the association who were absent from the underlying action. Because conflicting interests exist between the association and the absent owners, representation was not adequate. When assessing prejudice, the court must consider whether the interests of an absent party are adequately represented by those already a party to the litigation. Clubhouse at Fairway Pines v. Fairway Pines Estates, 214 P.3d 451 (Colo. App. 2008).

"Litigation", as used in subsection (1)(d), includes arbitration. Triple Crown v. Vill. Homes of Colo., 2013 COA 150M, 328 P.3d 275.

A binding arbitration provision in a declaration did not violate subsection (2) because it applied to all parties, not only to the declarant. Triple Crown v. Vill. Homes of Colo., 2013 COA 150M, 328 P.3d 275.

A declaration's binding arbitration provision does not implicate subsection (2) where the unit owners, and not the association, had the power to amend the declaration. Moreover, amending a declaration is not one of the enumerated powers granted an association under subsection (1). Vallagio at Inverness v. Metro. Homes, 2015 COA 65, 412 P.3d 709, aff'd, 2017 CO 69, 395 P.3d 788.

38-33.3-302.5. Unit owners' access to common elements - duties of association - unreasonable restrictions and prohibitions prohibited - notice of restriction or prohibition required.

(1) In regulating the use of common elements, as permitted by section 38-33.3-302 (1)(f), an association shall preserve and protect unit owners' ability to use and enjoy common elements and shall not unreasonably restrict or prohibit unit owners' access to, or enjoyment of, any common element, including during the maintenance, repair, replacement, or modification of a common element.

(2) During maintenance, repair, replacement, or modification of a common element, an association may restrict or prohibit unit owners' access to, and enjoyment of, the common element only to the extent and for the length of time necessary to:

(a) Protect the safety of any individuals, including unit owners and individuals performing the maintenance, repair, replacement, or modification of the common element; or

(b) Preserve the structural integrity or condition of a repair, replacement, or modification.

(3) If an association must restrict or prohibit unit owners' access to one or more common elements of the common interest community for more than seventy-two hours, the association shall:

(a) Provide an electronic or written notice to each unit owner, which notice is provided as soon as reasonably possible and includes:

(I) A simple explanation of the reason for the restriction or prohibition;

(II) An indication of the estimated time or date upon which the restriction or prohibition will no longer exist; and

(III) A telephone number or email address whereby a unit owner may pose questions or concerns about the restriction or prohibition for the consideration of the association; and

(b) Post a visible, clearly legible notice at each physical access point to the common element, which notice remains posted for the duration of the restriction or prohibition and includes the elements described in subsection (3)(a) of this section.

Source: L. 2022: Entire section added, (HB 22-1040), ch. 93, p. 448, § 2, effective August 10.

38-33.3-303. Executive board members and officers - powers and duties - reserve funds - audit.

(1) (a) Except as provided in the declaration, the bylaws, or subsection (3) of this section or any other provisions of this article, the executive board may act in all instances on behalf of the association.

(b) Notwithstanding any provision of the declaration or bylaws to the contrary, all members of the executive board shall have available to them all information related to the responsibilities and operation of the association obtained by any other member of the executive board. This information shall include, but is not necessarily limited to, reports of detailed monthly expenditures, contracts to which the association is a party, and copies of communications, reports, and opinions to and from any member of the executive board or any managing agent, attorney, or accountant employed or engaged by the executive board to whom the executive board delegates responsibilities under this article.

(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.

(3) (a) The executive board may not act on behalf of the association to amend the declaration, to terminate the common interest community, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

(b) Committees of the association shall be appointed pursuant to the governing documents of the association or, if the governing documents contain no applicable provisions, pursuant to section 7-128-206, C.R.S. The person appointed after August 15, 2009, to preside over any such committee shall meet the same qualifications as are required by the governing documents of the association for election or appointment to the executive board of the association.

(4) (a) (I) Within ninety days after adoption of a proposed budget for the common interest community, the executive board shall mail, by first-class mail, or otherwise deliver, including posting the proposed budget on the association's website, a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider the budget. The meeting must occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the bylaws. The executive board shall give notice to the unit owners of the meeting as allowed for in the bylaws.

(II) (A) Unless the declaration requires otherwise, the budget proposed by the executive board does not require approval from the unit owners and it will be deemed approved by the unit owners in the absence of a veto at the noticed meeting by a majority of all unit owners, or if permitted in the declaration, a majority of a class of unit owners, or any larger percentage specified in the declaration, whether or not a quorum is present. If the proposed budget is vetoed, the periodic budget last proposed by the executive board and not vetoed by the unit owners must be continued until a subsequent budget proposed by the executive board is not vetoed by the unit owners.

(B) This subsection (4)(a)(II) shall not apply to any common interest community formed prior to July 1, 1992, if the declaration sets a maximum assessment amount or limits the increase in an annual budget to a specific amount and the budget proposed by the executive board does not exceed the maximum amount or limits set in the declaration.

(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, by an independent and qualified person selected by the 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.

(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.

(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).

(5) (a) Subject to subsection (6) of this section:

(I) The declaration, except a declaration for a large planned community, may provide for a period of declarant control of the association, during which period a declarant, or persons designated by such declarant, may appoint and remove the officers and members of the executive board. Regardless of the period of declarant control provided in the declaration, a period of declarant control terminates no later than the earlier of sixty days after conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant, two years after the last conveyance of a unit by the declarant in the ordinary course of business, or two years after any right to add new units was last exercised.

(II) The declaration for a large planned community may provide for a period of declarant control of the association during which period a declarant, or persons designated by such declarant, may appoint and remove the officers and members of the executive board. Regardless of the period of declarant control provided in the declaration, a period of declarant control terminates in a large planned community no later than the earlier of sixty days after conveyance of seventy-five percent of the maximum number of units that may be created under zoning or other governmental development approvals in effect for the large planned community at any given time to unit owners other than a declarant, six years after the last conveyance of a unit by the declarant in the ordinary course of business, or twenty years after recordation of the declaration.

(b) A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of the period of declarant control, but, in that event, the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(c) If a period of declarant control is to terminate in a large planned community pursuant to subparagraph (II) of paragraph (a) of this subsection (5), the declarant, or persons designated by the declarant, shall no longer have the right to appoint and remove the officers and members of the executive board unless, prior to the termination date, the association approves an extension of the declarant's ability to appoint and remove no more than a majority of the executive board by vote of a majority of the votes entitled to be cast in person or by proxy, other than by the declarant, at a meeting duly convened as required by law. Any such approval by the association may contain conditions and limitations. Such extension of declarant's appointment and removal power, together with any conditions and limitations approved as provided in this paragraph (c), shall be included in an amendment to the declaration previously executed by the declarant.

(6) Not later than sixty days after conveyance of twenty-five percent of the units that may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the executive board must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units that may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the executive board must be elected by unit owners other than the declarant.

(7) Except as otherwise provided in section 38-33.3-220 (5), not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners other than the declarant or designated representatives of unit owners other than the declarant. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(8) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a vote of sixty-seven percent of all persons present and entitled to vote at any meeting

of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant or a member elected pursuant to a class vote under section 38-33.3-207 (4).

(9) Within sixty days after the unit owners other than the declarant elect a majority of the members of the executive board, the declarant shall deliver to the association all property of the unit owners and of the association held by or controlled by the declarant, including without limitation the following items:

(a) The original or a certified copy of the recorded declaration as amended, the association's articles of incorporation, if the association is incorporated, bylaws, minute books, other books and records, and any rules and regulations which may have been promulgated;

(b) An accounting for association funds and financial statements, from the date the association received funds and ending on the date the period of declarant control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the association.

(c) The association funds or control thereof;

(d) All of the declarant's tangible personal property that has been represented by the declarant to be the property of the association or all of the declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the common elements, and inventories of these properties;

(e) A copy, for the nonexclusive use by the association, of any plans and specifications used in the construction of the improvements in the common interest community;

(f) All insurance policies then in force, in which the unit owners, the association, or its directors and officers are named as insured persons;

(g) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the common interest community;

(h) Any other permits issued by governmental bodies applicable to the common interest community and which are currently in force or which were issued within one year prior to the date on which unit owners other than the declarant took control of the association;

(i) Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;

(j) A roster of unit owners and mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records;

(k) Employment contracts in which the association is a contracting party;

(l) Any service contract in which the association is a contracting party or in which the association or the unit owners have any obligation to pay a fee to the persons performing the services;

(m) For large planned communities, copies of all recorded deeds and all recorded and unrecorded leases evidencing ownership or leasehold rights of the large planned community unit owners' association in all common elements within the large planned community; and

(n) For planned communities and condominiums, the reserve study commissioned by the declarant pursuant to section 38-33.3-209.2.

Source: L. 91: Entire article added, p. 1737, § 1, effective July 1, 1992. **L. 93:** (7), (8), and (9)(e) amended, p. 651, § 16, effective April 30. **L. 94:** (5) and (8) amended, p. 2848, § 5, effective July 1. **L. 95:** (5)(a), (9)(k), and (9)(l) amended and (5)(c) and (9)(m) added, pp. 238, 239, §§ 5, 6, effective July 1. **L. 2002:** (4) and (5)(a)(I) amended, p. 768, § 4, effective August 7. **L. 2005:** (4) amended, p. 1383, § 13, effective January 1, 2006. **L. 2006:** (2) and (4)(b) amended and (2.5) added, p. 1221, § 9, effective May 26. **L. 2009:** (1) and (3) amended, (HB 09-1359), ch. 257, p. 1164, § 2, effective August 5. **L. 2016:** (4)(a) amended, (HB 16-1149), ch. 104, p. 300, § 3, effective July 1, 2018. **L. 2018:** (4)(a)(II) amended, (HB 18-1342), ch. 387, p. 2317, § 2, effective July 1. **L. 2026:** (9)(l) and (9)(m) amended and (9)(n) added, (HB 26-1099), ch. 42, p. 196, § 3, effective August 12.

ANNOTATION

A declaration does not violate subsection (5) by requiring, even after the period in which a declarant's control of the association has expired, that the binding arbitration provision may only be amended with the declarant's consent. The permissible period of declarant control of an association set forth in subsection (5) is not pertinent to the issue of amending the declaration because the declaration is amended by a vote of the unit owners, not the association. Vallagio at Inverness v. Metro. Homes, 2015 COA 65, 412 P.3d 709, aff'd on other grounds, 2017 CO 69, 395 P.3d 788.

Director did not breach fiduciary duty to homeowners' association, although a director of the association, by installing a satellite dish in violation of a covenant, where the plan was submitted for approval, approval was granted, and director was not involved in the decision whether to grant initial approval for the dish. Woodmoor

Improvement Ass'n v. Brenner, 919 P.2d 928 (Colo. App. 1996).

38-33.3-303.5. Construction defect actions - disclosure - approval by unit owners - definitions - exemptions.

(1) (a) Before the executive board, pursuant to section 38-33.3-302 (1)(d), institutes a construction defect action, the executive board shall comply with this section.

(b) For the purposes of this section only:

(I) "Construction defect action":

(A) Means any civil action or arbitration proceeding for damages, indemnity, subrogation, or contribution brought against a construction professional to assert a claim, counterclaim, cross-claim, or third-party claim for damages or loss to, or the loss of use of, real or personal property or personal injury caused by a defect in the design or construction of an improvement to real property, regardless of the theory of liability; and

(B) Includes any related, ancillary, or derivative claim, and any claim for breach of fiduciary duty or an act or omission of a member of an association's executive board, that arises from an alleged construction defect or that seeks the same or similar damages.

(II) "Construction professional" has the meaning set forth in section 13-20-802.5 (4).

(c) **Meeting to consider commencement of construction defect action - disclosures - required terms.**

(I) The executive board shall mail or deliver written notice of the anticipated commencement of the construction defect action to each unit owner at the owner's last-known address described in the association's records and to the last-known address of each construction professional against whom a construction defect action is proposed; except that this notice requirement does not apply to:

(A) Construction professionals identified after the notice is mailed; or

(B) Joined parties in a construction defect action previously approved by owners pursuant to subsection (1)(d) of this section.

(II) The notice given pursuant to this subsection (1)(c) must call a meeting of the unit owners, which must be held no less than ten days and no more than fifteen days after the mailing date of the notice, to consider whether to bring a construction defect action. A failure to hold the meeting within this time period voids the subsequent vote. A quorum is not required at the meeting. In no event shall the time period for providing the notice required pursuant to subsection (1)(c)(I) of this section, holding the meeting required pursuant to this subsection

(1)(c)(II), and voting as required by subsection (1)(d) of this section exceed ninety days. The notice must state that:

(A) The conclusion of the meeting initiates the voting period, during which the association will accept votes for and against proceeding with the construction defect action. The disclosure and voting period shall end ninety days after the mailing date of the meeting notice or when the association determines that the construction defect action is either approved or disapproved, whichever occurs first.

(B) The construction professional against whom the construction defect action is proposed will be invited to attend and will have an opportunity to address the unit owners concerning the alleged construction defect; and

(C) The presentation at the meeting by the construction professional or the construction professional's designee or designees may, but is not required to, include an offer to remedy any defect in accordance with section 13-20-803.5 (3) of the "Construction Defect Action Reform Act".

(III) The notice given pursuant to this subsection (1)(c) must also contain a description of the nature of the construction defect action, which description identifies alleged defects with reasonable specificity, the relief sought, a good-faith estimate of the benefits and risks involved, and any other pertinent information. The notice shall also include the following disclosures:

1. The alleged construction defects might result in increased costs to the association in maintenance or repair or cause an increase in assessments or special assessments to cover the cost of repairs.

2. If the association does not file a claim before the applicable legal deadlines, the claim will expire.

3. Until the alleged defects are repaired, sellers of units within the common interest community might owe unit buyers a duty to disclose known defects.

4. The executive board (intends to enter) (has entered) into a fee arrangement with the attorneys representing the association, under which (the attorneys will be paid a contingency fee equal to _____ percent of the (net) (gross) recovery of the amount the association recovers from the defendant(s)) (the association's attorneys will be paid (an hourly fee of $_____) (a fixed fee of $_____)).

5. In addition to attorney fees, the association may incur up to $_____ for legal costs, including expert witnesses, depositions, and filing fees. The amount will not be exceeded without

the executive board's further written authority. If the association does not prevail on its claim, the association may be responsible for paying these legal expenses.

6. If the association does not prevail on its claim, the association may be responsible for paying its attorney fees.

7. If the association does not prevail on its claim, a court or arbitrator sometimes awards costs and attorney fees to the opposing party. Should that happen in this case, the association may be responsible for paying the opposing party's costs and fees as a result of such award.

8. There is no guarantee that the association will recover enough funds to repair the claimed construction defect(s). If the claimed defects are not repaired, additional damage to property and a reduction in the useful life of the common elements might occur.

9. Until the claimed construction defects are repaired, or until the construction defect claim is concluded, the market value of the units in the association might be adversely affected.

10. Until the claimed construction defect(s) are repaired, or until the construction defect(s) claim is concluded, owners in the association might have difficulty refinancing and prospective buyers might have difficulty obtaining financing. In addition, certain federal underwriting standards or regulations prevent refinancing or obtaining a new loan in projects where a construction defect is claimed, and certain lenders as a matter of policy will not refinance or provide a new loan in projects where a construction defect is claimed.

(IV) The association shall maintain a verified owner mailing list that identifies the owners to whom the association mailed the notice required pursuant to this subsection (1)(c). The verified owner mailing list shall include, for each owner, the address, if any, to which the association mailed the notice required pursuant to this subsection (1)(c). The association shall provide a copy of the verified owner mailing list to each construction professional who is sent a notice pursuant to this subsection (1)(c) at the owner meeting required under subsection (1)(c)(II) of this section. The owner mailing list shall be deemed verified if a specimen copy of the mailing list is certified by an association officer or agent. If the association commences a construction defect action against any construction professional, the association shall file its verified owner mailing list and records of votes received from owners during the voting period with the appropriate forum under seal.

(V) The substance of a proposed construction defect action may be amended or supplemented after the meeting, but an amended or supplemented claim does not extend the voting period. The executive board shall give notice to unit owners of any amended or supplemented claim and shall maintain records of its communications with unit owners. Owner approval pursuant to subsection (1)(d) of this section is not required for amendments or

supplements to a construction defect action made after the notice pursuant to this subsection (1)(c) is sent.

(d) **Approval by unit owners - procedures.**

(I) (A) Notwithstanding any provision of law or any requirement in the governing documents, the executive board has the right to initiate a construction defect action if authorized within the voting period by owners of units to which at least sixty-five percent of votes in the association are allocated. The approval is not required for an association to proceed with a construction defect action if the alleged construction defect pertains to a facility that is intended and used for nonresidential purposes and if the cost to repair the alleged defect does not exceed fifty thousand dollars. The approval is not required for an association to proceed with a construction defect action when the association is the contracting party for the performance of labor or purchase of services or materials.

(B) Notwithstanding any other provision of law, an owner's vote shall be submitted only once and may be obtained in any written format confirming the owner's vote to approve or reject the proposed construction defect action. The association shall maintain a record of all votes until the conclusion of the construction defect action, including all appeals, if any.

(II) (A) Nothing in this section alters the tolling provisions of section 13-20-805.

(B) All statutes of limitation and repose applicable to claims based on defects described with reasonable specificity in the notice, which may be supplemented or amended pursuant to subsection (1)(c)(IV) of this section, are tolled from the date the notice sent pursuant to subsection (1)(c) of this section is mailed until either the ninety-day voting and disclosure period ends or until the association determines that the construction defect action is either approved or disapproved, whichever occurs first.

(C) The applicable statutes of limitation and repose that apply to claims based on a defect described in the notice with reasonable specificity are tolled pursuant to this subsection (1)(d)(II) once, and may not extend the statutes of limitation and repose that apply to claims based on that defect for more than a total of ninety days, respectively. If a defect not included in the notice sent pursuant to subsection (1)(c) of this section is the subject of a later vote, tolling pursuant to this subsection (1)(d) applies unless the claim based on that defect is otherwise barred by the statute of limitations or statute of repose.

(III) **Vote count - exclusions.** For purposes of calculating the required vote under this subsection (1)(d) only, the following votes are excluded:

(A) Any votes allocated to units owned by a development party. As used in this subsection (1)(d)(III)(A), "development party" means a contractor, subcontractor, developer, or builder responsible for any part of the design, construction, or repair of any portion of the common interest community and any of that party's affiliates; and "affiliate" includes an entity controlled

or owned, in whole or in part, by any person that controls or owns a development party or by the spouse of a development party.

(B) Any votes allocated to units owned by banking institutions, unless a vote from such an institution is actually received by the association;

(C) Any votes allocated to units of a product type in which no defects are alleged, in a common interest community whose declaration provides that common expense liabilities are not shared between the product types;

(D) Any votes allocated to units owned by owners who are deemed nonresponsive. If the status of the nonresponsive unit owners is challenged in court, the court shall consider whether the executive board has made diligent efforts to contact the unit owner regarding the vote and may consider: Whether a mailing was returned as undeliverable; whether the owner appears to be residing at the unit; and whether the association has used other contact information, such as an electronic mail address or telephone number for the owner.

(e) **Notice to construction professional.** At least five business days before the mailing of the notice required by subsection (1)(c) of this section, the association shall notify each construction professional against whom a construction defect action is proposed by mail, at its last-known address, of the date and time of the meeting called to consider the construction defect action pursuant to subsection (1)(c) of this section.

(2) Repealed.

(3) Nothing in this section shall be construed to:

(a) Require the disclosure in the notice or the disclosure to a unit owner of attorney-client communications or other privileged communications;

(b) Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or

(c) Limit or impair the authority of the executive board to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.

(4) **Provisions not severable.** Notwithstanding section 2-4-204, the general assembly finds, determines, and declares that if any provision of this section or its application to any person or circumstance is held invalid, the entire section shall be deemed invalid.

(5) An executive board that is successful under a construction defect claim or settlement shall first use net monetary damages or net proceeds received pursuant to the claim to repair the construction defect.

Source: L. 2001: Entire section added, p. 390, § 3, effective August 8. **L. 2017:** (1) amended, (2) repealed, and (4) added, (HB 17-1279), ch. 232, p. 901, § 1, effective May 23. **L. 2025:** (1)(d)(I)(A) and IP(1)(d)(III) amended and (5) added, (HB 25-1272), ch. 183, p. 794, § 6, effective August 6.

Cross references: For the short title ("Colorado American Dream Act") and the legislative declaration in HB 25-1272, see section 1 of chapter 183, Session Laws of Colorado 2025.

ANNOTATION

Law reviews. For article, "House Bill 17-1279: New Prerequisites to Homeowner Association Construction Defect Lawsuits", see 46 Colo. Law. 36 (Aug.-Sept. 2017). For article, "Mitigating Potential Condo Conversion and Renovation Construction Defect Liabilities: Part 1", see 48 Colo. Law. 28 (Apr. 2019). For article, "Making Up Your Own Rules for Resolving Residential Construction Defect Disputes", see 52 Colo. Law. 36 (May 2023). For article, "The Past, Present, and Future of Residential Construction Defect Action Reform in Colorado", see 54 Colo. Law. 28 (Jan.-Feb. 2025).

38-33.3-304. Transfer of special declarant rights.

(1) A special declarant right created or reserved under this article may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the common interest community is located. The instrument is not effective unless executed by the transferee.

(2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon such transferor by this article. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to the common interest community.

(c) If a transferor retains any special declarant rights but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any

obligations or liabilities imposed on a declarant by this article or by the declaration relating to the retained special declarant rights and arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy or receivership proceedings of any units owned by a declarant or real estate in a common interest community subject to development rights, a person acquiring title to all the property being foreclosed or sold succeeds to only those special declarant rights related to that property held by that declarant which are specified in a written instrument prepared, executed, and recorded by such person at or about the same time as the judgment or instrument or by which such person obtained title to all of the property being foreclosed or sold.

(4) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy act or receivership proceedings of all interests in a common interest community owned by a declarant:

(a) The declarant ceases to have any special declarant rights; and

(b) The period of declarant control terminates unless the instrument which is required by subsection (3) of this section to be prepared, executed, and recorded at or about the same time as the judgment or instrument conveying title provides for transfer of all special declarant rights to a successor declarant.

(5) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on any declarant by this article or by the declaration.

(b) A successor to any special declarant right, other than a successor described in paragraph (c) or (d) of this subsection (5) or a successor who is an affiliate of a declarant, is subject to all obligations and liabilities imposed by this article or the declaration:

(I) On a declarant which relate to the successor's exercise or nonexercise of special declarant rights; or

(II) On the declarant's transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant or made before the common interest community was created;

(C) Breach of any fiduciary obligation by any previous declarant or such declarant's appointees to the executive board; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, if such successor is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant.

(d) A successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to the instrument prepared, executed, and recorded by such person pursuant to the provisions of subsection (3) of this section may declare such successor's intention in such recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than the right held by such successor's transferor to control the executive board in accordance with the provisions of section 38-33.3-303 (5) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection (5), such successor declarant is not subject to any liability or obligation as a declarant, other than liability for the successor's acts and omissions under section 38-33.3-303 (4).

(6) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this article or the declaration.

Source: L. 91: Entire article added, p. 1740, § 1, effective July 1, 1992.

38-33.3-305. Termination of contracts and leases of declarant.

(1) The following contracts and leases, if entered into before the executive board elected by the unit owners pursuant to section 38-33.3-303 (7) takes office, may be terminated without penalty by the association, at any time after the executive board elected by the unit owners pursuant to section 38-33.3-303 (7) takes office, upon not less than ninety days' notice to the other party:

(a) Any management contract, employment contract, or lease of recreational or parking areas or facilities;

(b) Any other contract or lease between the association and a declarant or an affiliate of a declarant; or

(c) Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing.

(2) Subsection (1) of this section does not apply to any lease the termination of which would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section or a proprietary lease.

Source: L. 91: Entire article added, p. 1743, § 1, effective July 1, 1992.

38-33.3-306. Bylaws.

(1) In addition to complying with applicable sections, if any, of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., or the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., if the common interest community is organized pursuant thereto, the bylaws of the association must provide:

(a) The number of members of the executive board and the titles of the officers of the association;

(b) Election by the executive board of a president, a treasurer, a secretary, and any other officers of the association the bylaws specify;

(c) The qualifications, powers and duties, and terms of office of, and manner of electing and removing, executive board members and officers and the manner of filling vacancies;

(d) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(e) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(f) A method for amending the bylaws.

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(3) (a) If an association with thirty or more units delegates powers of the executive board or officers relating to collection, deposit, transfer, or disbursement of association funds to other persons or to a managing agent, the bylaws of the association shall require the following:

(I) That the other persons or managing agent maintain fidelity insurance coverage or a bond in an amount not less than fifty thousand dollars or such higher amount as the executive board may require;

(II) That the other persons or managing agent maintain all funds and accounts of the association separate from the funds and accounts of other associations managed by the other persons or managing agent and maintain all reserve accounts of each association so managed separate from operational accounts of the association;

(III) That an annual accounting for association funds and a financial statement be prepared and presented to the association by the managing agent, a public accountant, or a certified public accountant.

(b) Repealed.

Source: L. 91: Entire article added, p. 1743, § 1, effective July 1, 1992. **L. 92:** (3) added, p. 2096, § 1, effective July 1, 1993. **L. 93:** (3) amended, p. 1464, § 10, effective June 6; IP(1) amended, p. 865, § 40, effective July 1, 1994. **L. 96:** (3)(b) repealed, p. 1088, § 2, effective May 23. **L. 97:** IP(1) amended, p. 764, § 36, effective July 1, 1998.

38-33.3-307. Upkeep of the common interest community.

(1) Except to the extent provided by the declaration, subsection (2) of this section, or section 38-33.3-313 (9), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of such owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through such owner's unit reasonably necessary for those purposes. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or expense to avoid damage, or the association if it is responsible, is liable for the cost of prompt repair.

(1.5) Maintenance, repair, or replacement of any drainage structure or facilities, or other public improvements required by the local governmental entity as a condition of development of the common interest community or any part thereof shall be the responsibility of the association, unless such improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair, or replacement or unless such maintenance, repair, or

replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity.

(2) In addition to the liability that a declarant as a unit owner has under this article, the declarant alone is liable for all expenses in connection with real estate within the common interest community subject to development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant. If the declarant fails to pay all expenses in connection with real estate within the common interest community subject to development rights, the association may pay such expenses, and such expenses shall be assessed as a common expense against the real estate subject to development rights, and the association may enforce the assessment pursuant to section 38-33.3-316 by treating such real estate as if it were a unit. If the association acquires title to the real estate subject to the development rights through foreclosure or otherwise, the development rights shall not be extinguished thereby, and, thereafter, the association may succeed to any special declarant rights specified in a written instrument prepared, executed, and recorded by the association in accordance with the requirements of section 38-33.3-304 (3).

(3) In a planned community, if all development rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

(4) In maintaining, repairing, or replacing common elements as required by subsection (1) of this section, an association shall comply with section 38-33.3-302.5 concerning unit owners' access to common elements.

Source: L. 91: Entire article added, p. 1744, § 1, effective July 1, 1992. **L. 93:** (2) amended, p. 651, § 17, effective April 30. **L. 98:** (2) amended, p. 483, § 14, effective July 1. **L. 2022:** (4) added, (HB 22-1040), ch. 93, p. 449, § 3, effective August 10.

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) (a) All regular and special meetings of the association's executive board, or any committee thereof, shall be open to attendance by all members of the association or their representatives. Agendas for meetings of the executive board shall be made reasonably available for examination by all members of the association or their representatives.

(b) (I) The association is encouraged to provide all notices and agendas required by this article in electronic form, by posting on a website or otherwise, in addition to printed form. If such electronic means are available, the association shall provide notice of all regular and special meetings of unit owners by electronic mail to all unit owners who so request and who furnish the association with their electronic mail addresses. Electronic notice of a special meeting shall be given as soon as possible but at least twenty-four hours before the meeting.

(II) Notwithstanding section 38-33.3-117 (1.5)(i), this paragraph (b) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7), C.R.S.

(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.

(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 persons speaking during the meeting. 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 the issue.

(c) Notwithstanding section 38-33.3-117 (1.5)(i), this subsection (2.5) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

(3) The members of the executive board or any committee thereof may hold an executive or closed door session and may restrict attendance to executive board members and such other persons requested by the executive board during a regular or specially announced meeting or a part thereof. The matters to be discussed at such an executive session shall include only matters enumerated in paragraphs (a) to (f) of subsection (4) of this section.

(4) Matters for discussion by an executive or closed session are limited to:

(a) Matters pertaining to employees of the association or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the association;

(b) Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(c) Investigative proceedings concerning possible or actual criminal misconduct;

(d) Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;

(e) Any matter, the disclosure of which would constitute an unwarranted invasion of individual privacy, including a disciplinary hearing regarding a unit owner and any referral of delinquency; except that a unit owner who is the subject of a disciplinary hearing or a referral of delinquency may request and receive the results of any vote taken at the relevant meeting; and

(f) Review of or discussion relating to any written or oral communication from legal counsel.

(4.5) Upon the final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate, about such matter in an open meeting.

(5) Prior to the time the members of the executive board or any committee thereof convene in executive session, the chair of the body shall announce the general matter of discussion as enumerated in paragraphs (a) to (f) of subsection (4) of this section.

(6) No rule or regulation of the board or any committee thereof shall be adopted during an executive session. A rule or regulation may be validly adopted only during a regular or special meeting or after the body goes back into regular session following an executive session.

(7) The minutes of all meetings at which an executive session was held shall indicate that an executive session was held and the general subject matter of the executive session.

Source: L. 91: Entire article added, p. 1745, § 1, effective July 1, 1992. **L. 95:** Entire section amended, p. 888, § 1, effective July 1. **L. 98:** (2) amended, p. 484, § 15, effective July 1. **L. 2002:** (4)(a) amended and (4)(f) added, p. 768, § 5, effective August 7. **L. 2005:** (3) and (5) amended, p. 781, § 71, effective June 1; (1) and (2) amended and (2.5) and (4.5) added, p. 1384, § 14, effective January 1, 2006. **L. 2006:** (1), (2.5)(a), and (2.5)(b) amended, p. 1222, § 10, effective May 26. **L. 2022:** (4)(e) amended, (HB 22-1137), ch. 367, p. 2615, § 2, effective August 10.

ANNOTATION

Meeting notices were not sufficient under this section where the first notice stated only that "[we] have been working on a Declarations rewrite and ... will be sending [it] via regular mail" and the second notice, which contained the substance of the proposal, was not provided at least ten days before the meeting. Tyra Summit Condos. II Ass'n, Inc. v. Clancy, 2017 COA 73, 413 P.3d 352.

38-33.3-309. Quorums.

(1) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent, or, in the case of an association with over one thousand unit owners, ten percent, of the votes which may be cast for election of the executive board are present, in person or by proxy at the beginning of the meeting.

(2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting or grant their proxy, as provided in section 7-128-205 (4), C.R.S.

Source: L. 91: Entire article added, p. 1745, § 1, effective July 1, 1992. **L. 98:** (2) amended, p. 484, § 16, effective July 1.

38-33.3-310. Voting - proxies.

(1) (a) If only one of the multiple owners of a unit is present at a meeting of the association, such owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(b) (I) (A) Votes for contested positions on the executive board shall be taken by secret ballot. 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 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 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 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 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.

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

(2) (a) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. A proxy shall not be valid if obtained through fraud or misrepresentation. Unless otherwise provided in the declaration, bylaws, or rules of the association, appointment of proxies may be made substantially as provided in section 7-127-203, C.R.S.

(b) If a unit is owned by more than one person, each owner of the unit may vote or register a protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven months after its date, unless the proxy itself indicates an earlier termination date.

(c) The association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the unit owner.

(d) The association and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.

(e) Any action of the association based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

(3) (a) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units:

(I) The provisions of subsections (1) and (2) of this section apply to lessees as if they were unit owners;

(II) Unit owners who have leased their units to other persons may not cast votes on those specified matters; and

(III) Lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners.

(b) Unit owners must also be given notice, in the manner provided in section 38-33.3-308, of all meetings at which lessees are entitled to vote.

(4) No votes allocated to a unit owned by the association may be cast.

Source: L. 91: Entire article added, p. 1745, § 1, effective July 1, 1992. **L. 2005:** (1) and (2) amended, p. 1385, § 15, effective January 1, 2006. **L. 2006:** (1)(b)(I) amended, p. 1223, § 11, effective May 26. **L. 2022:** (2)(b) amended, (SB 22-059), ch. 34, p. 186, § 1, effective August 10.

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.

Source: L. 2005: Entire section added, p. 1386, § 16, effective January 1, 2006. **L. 2006:** Entire section R&RE, p. 1223, § 12, effective May 26.

38-33.3-311. Tort and contract liability.

(1) Neither the association nor any unit owner except the declarant is liable for any cause of action based upon that declarant's acts or omissions in connection with any part of the common interest community which that declarant has the responsibility to maintain. Otherwise, any action alleging an act or omission by the association must be brought against the association and not against any unit owner. If the act or omission occurred during any period of declarant control and

the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for all tort losses not covered by insurance suffered by the association or that unit owner and all costs that the association would not have incurred but for such act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section by being a unit owner or a member or officer of the association.

(2) The declarant is liable to the association for all funds of the association collected during the period of declarant control which were not properly expended.

Source: L. 91: Entire article added, p. 1746, § 1, effective July 1, 1992.

ANNOTATION

Subsection (1) does not establish the adequacy as a matter of law of the representation by a common interest community association of lot owners belonging to the association who were absent from the underlying action. Because conflicting interests exist between the association and the absent owners, representation was not adequate. When assessing prejudice, the court must consider whether the interests of an absent party are adequately represented by those already a party to the litigation. Clubhouse at Fairway Pines v. Fairway Pines Estates, 214 P.3d 451 (Colo. App. 2008).

38-33.3-312. Conveyance or encumbrance of common elements.

(1) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast 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, or any larger percentage the declaration specifies, agree to that action; except that all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(2) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast 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, or any larger percentage the declaration specifies, agree to that action; except that, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made in compliance with section 38-33.3-218, is void.

(3) An agreement to convey, or subject to a security interest, common elements in a condominium or planned community, or, in a cooperative, an agreement to convey, or subject to a security interest, any part of a cooperative, must be evidenced by the execution of an agreement, in the same manner as a deed, by the association. The agreement must specify a date after which the agreement will be void unless approved by the requisite percentage of owners. Any grant, conveyance, or deed executed by the association must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(4) The association, on behalf of the unit owners, may contract to convey an interest in a common interest community pursuant to subsection (1) of this section, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section and executed and ratified pursuant to subsection (3) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(5) Unless in compliance with this section, any purported conveyance, encumbrance, judicial sale, or other transfer of common elements or any other part of a cooperative is void.

(6) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of ingress and egress of the unit and support of the unit.

(7) Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

(8) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section.

Source: L. 91: Entire article added, p. 1747, § 1, effective July 1, 1992. **L. 93:** (1) and (5) amended, p. 652, § 18, effective April 30. **L. 98:** (1) to (3) amended, p. 484, § 17, effective July 1.

ANNOTATION

Subsection (3) requires that, when requisite number of unit owners approve the sale of new units, such approval be executed as a written agreement demonstrating that association has authority to enter into contracts to sell the new units. Nothing in the record shows that the unit owners executed any type of agreement approving the sale of new units. Platt v. Aspenwood Condo. Ass'n, 214 P.3d 1060 (Colo. App. 2009).

"Contract" referred to in subsection (4) must be ratified by the unit owners to be enforceable. Subsection (4) allows an association to enter into a contract but requires ratification for the contract to be enforceable. Association could enter into a contract but it could not also ratify the contract; therefore, the unit owners were required to ratify the contract to render it enforceable. Platt v. Aspenwood Condo. Ass'n, 214 P.3d 1060 (Colo. App. 2009).

Under subsection (5), a "purported conveyance", not "the agreement to convey" or "the contract", is void for noncompliance with subsections (1) through (4). Although plaintiffs entered into contract to purchase new condominium unit, the unit was not conveyed to them; therefore, because the contract was not ratified by the unit owners, it was unenforceable, and the plaintiffs specific performance claim cannot stand. Platt v. Aspenwood Condo. Ass'n, 214 P.3d 1060 (Colo. App. 2009).

Trial court erred in dismissing plaintiffs' breach of implied covenant of good faith and fair dealing claim because subsection (5) pertains to conveyances and not to the contract. Platt v. Aspenwood Condo. Ass'n, 214 P.3d 1060 (Colo. App. 2009).

Contract for sale of condominium unit is not void under subsection (5). Because contract was not ratified by the unit owners, it is unenforceable, and purchasers' specific performance claim cannot stand. Nothing in the record shows that unit owners executed any type of agreement approving the sale of two new units. Reading subsections (3) and (4) together, "contract" referred to in subsection (4) must be ratified by the unit owners to render it enforceable. Moreover, subsection (5) pertains to conveyances and not to the contract. Although purchasers entered into contract to purchase a new condominium unit, the unit was not conveyed to them. Thus, subsection (5) was not triggered. Platt v. Aspenwood Condo. Ass'n, 214 P.3d 1060 (Colo. App. 2009).

38-33.3-313. Insurance.

(1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the common elements and, in a planned community, also on property that must become common elements, for broad form covered causes of loss; except that

the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements, and, in cooperatives, also of all units, in an amount, if any, specified by the common interest community instruments or otherwise deemed sufficient in the judgment of the executive board but not less than any amount specified in the association documents, insuring the executive board, the unit owners' association, the management agent, and their respective employees, agents, and all persons acting as agents. The declarant shall be included as an additional insured in such declarant's capacity as a unit owner and board member. The unit owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements and, in cooperatives, also of all units. The insurance shall cover claims of one or more insured parties against other insured parties.

(2) In the case of a building that is part of a cooperative or that contains units having horizontal boundaries described in the declaration, the insurance maintained under paragraph (a) of subsection (1) of this section must include the units but not the finished interior surfaces of the walls, floors, and ceilings of the units. The insurance need not include improvements and betterments installed by unit owners, but if they are covered, any increased charge shall be assessed by the association to those owners.

(3) If the insurance described in subsections (1) and (2) of this section is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it considers appropriate, including insurance on units it is not obligated to insure, to protect the association or the unit owners.

(4) Insurance policies carried pursuant to subsections (1) and (2) of this section must provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of such unit owner's interest in the common elements or membership in the association;

(b) The insurer waives its rights to subrogation under the policy against any unit owner or member of his household;

(c) No act or omission by any unit owner, unless acting within the scope of such unit owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(5) Any loss covered by the property insurance policy described in paragraph (a) of subsection (1) and subsection (2) of this section must be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for the association unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (9) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association, unit owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the common interest community is terminated.

(6) The association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the association settles claims for damages to real property, it shall have the authority to assess negligent unit owners causing such loss or benefiting from such repair or restoration all deductibles paid by the association. In the event that more than one unit is damaged by a loss, the association in its reasonable discretion may assess each unit owner a pro rata share of any deductible paid by the association.

(7) An insurance policy issued to the association does not obviate the need for unit owners to obtain insurance for their own benefit.

(8) An insurer that has issued an insurance policy for the insurance described in subsections (1) and (2) of this section shall issue certificates or memoranda of insurance to the association and, upon request, to any unit owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the association, and each unit owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

(9) (a) Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the association unless:

(I) The common interest community is terminated, in which case section 38-33.3-218 applies;

(II) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

(III) Sixty-seven percent of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild; or

(IV) Prior to the conveyance of any unit to a person other than the declarant, the holder of a deed of trust or mortgage on the damaged portion of the common interest community rightfully demands all or a substantial part of the insurance proceeds.

(b) The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced, the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, as follows:

(I) In a condominium, in proportion to the common element interests of all the units; and

(II) In a cooperative or planned community, in proportion to the common expense liabilities of all the units; except that, in a fixed or limited equity cooperative, the unit owner may not receive more of the proceeds than would satisfy the unit owner's entitlements under the declaration if the unit owner leaves the cooperative. In such a cooperative, the proceeds that remain after satisfying the unit owner's obligations continue to be held in trust by the association for the benefit of the cooperative. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under section 38-33.3-107, and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

(10) If any unit owner or employee of an association with thirty or more units controls or disburses funds of the common interest community, the association must obtain and maintain, to the extent reasonably available, fidelity insurance. Coverage shall not be less in aggregate than two months' current assessments plus reserves, as calculated from the current budget of the association.

(11) Any person employed as an independent contractor by an association with thirty or more units for the purposes of managing a common interest community must obtain and maintain fidelity insurance in an amount not less than the amount specified in subsection (10) of this section, unless the association names such person as an insured employee in a contract of fidelity insurance, pursuant to subsection (10) of this section.

(12) The association may carry fidelity insurance in amounts greater than required in subsection (10) of this section and may require any independent contractor employed for the

purposes of managing a common interest community to carry more fidelity insurance coverage than required in subsection (10) of this section.

(13) Premiums for insurance that the association acquires and other expenses connected with acquiring such insurance are common expenses.

Source: L. 91: Entire article added, p. 1748, § 1, effective July 1, 1992. **L. 98:** (9)(a)(III) amended, p. 485, § 18, effective July 1.

38-33.3-314. Surplus funds.

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of or provision for reserves shall be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

Source: L. 91: Entire article added, p. 1752, § 1, effective July 1, 1992. **L. 93:** Entire section amended, p. 652, § 19, effective April 30.

38-33.3-315. Assessments for common expenses.

(1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the association.

(2) Except for assessments under subsections (3) and (4) of this section and section 38-33.3-207 (4)(a)(IV), all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section 38-33.3-207 (1) and (2). Any past-due common expense assessment or installment of a common expense assessment bears interest at the rate established by the association in an amount not to exceed eight percent per year.

(3) To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited; and

(c) The costs of insurance shall be assessed in proportion to risk, and the costs of utilities shall be assessed in proportion to usage.

(4) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against such owner's unit.

(5) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(6) Each unit owner is liable for assessments made against such owner's unit during the period of ownership of such unit. No unit owner may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit against which the assessments are made.

(7) Unless otherwise specifically provided in the declaration or bylaws, the association may enter into an escrow agreement with the holder of a unit owner's mortgage so that assessments may be combined with the unit owner's mortgage payments and paid at the same time and in the same manner; except that any such escrow agreement shall comply with any applicable rules of the federal housing administration, department of housing and urban development, veterans' administration, or other government agency.

Source: L. 91: Entire article added, p. 1753, § 1, effective July 1, 1992. **L. 93:** (6) amended, p. 653, § 20, effective April 30. **L. 94:** (2) amended, p. 2849, § 6, effective July 1. **L. 2005:** (7) added, p. 1387, § 17, effective January 1, 2006. **L. 2022:** (2) amended, (HB 22-1137), ch. 367, p. 2616, § 3, effective August 10.

ANNOTATION

Summary judgment was not appropriate in an action brought by an association to collect unpaid association dues for a timeshare unit where the owner of the unit made a sufficient showing that the developer, in connection with a resale program, agreed to pay the dues, and the association and the developer were, for all practical purposes, one and the same. Club Telluride Owners Ass'n, Inc. v. Mitchell, 70 P.3d 502 (Colo. App. 2002).

Relieving the owner of a timeshare unit of an obligation to pay dues when the developer agreed to pay the dues in connection with a resale program was not void as against public policy. This section prohibits preferential assessments among units. It does not address agreements concerning how assessments will be paid. The statutory scheme would not be frustrated if the association accepted the developer and its successor as the primary obligors and looked to the owner as surety

after exhausting collection efforts against the primary obligors. Club Telluride Owners Ass'n, Inc. v. Mitchell, 70 P.3d 502 (Colo. App. 2002).

Common law right to offset damages barred. The public policy of this act, including the liability of each unit owner for assessments set forth in subsection (6), bars a unit owner's common law right to use damages owed to him by a homeowners' association to offset his obligation to pay assessments. Briargate at Seventeenth Ave. v. Nelson, 2021 COA 78M, 494 P.3d 1149.

38-33.3-316. Lien for assessments - liens for fines, fees, charges, costs, and attorney fees - limitations - definition.

(1) (a) The association, if such association is incorporated or organized as a limited liability company, has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Fees, charges, late charges, attorney fees up to the maximum amount authorized under subsection (7) of this section, fines, and interest charged pursuant to section 38-33.3-302 (1)(j), (1)(k), and (1)(l), section 38-33.3-313 (6), and section 38-33.3-315 (2) may be subject to a statutory lien but are not subject to a foreclosure action under this article 33.3.

(b) If an assessment is payable in installments, each installment may be subject to a statutory lien if the unit owner fails to pay the installment within fifteen days after the installment becomes due, but the association may not pursue legal action for unpaid monthly installments until the unit owner has failed to pay at least three monthly installments pursuant to section 38-33.3-209.5 (7)(a)(III)(B).

(2) (a) A lien under this section is prior to all other liens and encumbrances on a unit except:

(I) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to;

(II) A security interest on the unit which has priority over all other security interests on the unit and which was recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, a security interest encumbering only the unit owner's interest which has priority over all other security interests on the unit and which was perfected before the date on which the assessment sought to be enforced became delinquent; and

(III) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(b) Subject to paragraph (d) of this subsection (2), a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of:

(I) An amount equal to the common expense assessments based on a periodic budget adopted by the association under section 38-33.3-315 (1) which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

(II) (Deleted by amendment, L. 93, p. 653, § 21, effective April 30, 1993.)

(c) This subsection (2) does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. A lien under this section is not subject to the provisions of part 2 of article 41 of this title or to the provisions of section 15-11-202, C.R.S.

(d) A lien described in subsection (1) of this section has the priority described in this subsection (2) if the other lien or encumbrance is created after June 30, 1992.

(3) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(4) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required.

(5) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of assessments become due.

(6) This section does not prohibit actions or suits to recover sums for which subsection (1) of this section creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(7) (a) (I) The association is entitled to costs and reasonable attorney fees that the association incurs in any action or suit for a judgment or decree brought by the association under this section.

(II) A court shall determine reasonable attorney fees in accordance with rule 121 sec. 1-22 of the Colorado rules of civil procedure.

(b) An association is not entitled to recover attorney fees under subsection (7)(a) of this section for attorney fees incurred before the association has complied with the notice requirements of section 38-33.3-209.5 (1.7)(a) with regard to any matter for which the association is required to comply with the notice requirements of section 38-33.3-209.5 (1.7)(a).

(8) The association shall furnish to a unit owner or such unit owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such owner's unit. The statement shall be furnished within fourteen calendar days after receipt of the request and is binding on the association, the executive board, and every unit owner. If no statement is

furnished to the unit owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the association shall have no right to assert a lien upon the unit for unpaid assessments which were due as of the date of the request.

(9) In any action by an association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the unit owner to collect all sums alleged to be due from the unit owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the association during the pending of the action to the extent of the association's common expense assessments.

(10) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section.

(10.3) At least thirty days before initiating a legal action to foreclose an association lien, the association shall provide written and electronic notice to the unit owner or the unit owner's designee that:

(a) The unit owner has the right to participate in credit counseling at the unit owner's expense and that information relating to obtaining credit counseling and the consequences of foreclosure by an association is available through the HOA information and resource center created in section 12-10-801 (1) or through a link to the federal department of housing and urban development on the department of local affairs' website; and

(b) Credit counseling may include:

(I) Discussion of amounts owed to the association in unpaid assessments and related costs;

(II) The impact of foreclosure on the unit owner's credit;

(III) Additional debt that may be incurred by the unit owner if foreclosure by the association is completed;

(IV) Options available to the unit owner to retain title to the unit or to remain in the unit; and

(V) Any other options that may be available to the unit owner to avoid foreclosure.

(10.5) To foreclose a lien described in this section:

(a) The association must have obtained a personal judgment against the unit owner in a civil action to collect the amounts due;

(b) The association must have attempted to bring a civil action against the unit owner but was prevented by the death of or incapacity of the unit owner;

(c) The association must have attempted to bring a civil action against the unit owner and made a reasonable attempt to serve the unit owner but the association was unable to serve the unit owner within one hundred eighty days; or

(d) The unit owner must have filed a bankruptcy petition or must have an involuntary bankruptcy petition filed against the unit owner, and the amount due the association is subject to the bankruptcy civil action.

(10.6) Subsection (10.5) of this section:

(a) Applies exclusively to a unit owned by an individual who occupies the unit as the unit owner's principal residence, unless the unit is used for workforce housing;

(b) Does not apply to a unit owned by an entity other than an individual or a unit that is not occupied as the unit owner's principal residence, unless the unit is used for workforce housing; and

(c) Applies to a unit used for workforce housing.

(10.7) (a) At least thirty days before initiating legal action to foreclose a lien under this section, the association shall provide written and electronic notice to the unit owner or the unit owner's designee that the unit owner has the right to engage in mediation prior to litigation. To initiate mediation, the unit owner must respond within thirty days after the date of the notice.

(b) To participate in mediation, both parties must:

(I) Select a mutually agreeable mediator knowledgeable about this article 33.3 and common interest community disputes; and

(II) Schedule the mediation session within thirty days after the notice provided in accordance with subsection (10.7)(a) of this section.

(c) If a unit owner fails to comply with subsection (10.7)(b) of this section within thirty days after the notice provided in accordance with subsection (10.7)(a) of this section, this subsection (10.7) does not bar the association from filing a civil action, which is subject to the rest of this section.

(d) At least thirty days before initiating legal action to foreclose a lien under this section, the association shall provide written and electronic notice to all lienholders identified on the unit owner property records of the pending legal action for foreclosure. The notice must include the amount of any outstanding assessment and other money owed.

(10.8) (a) In addition to the notifications or information that the association is required pursuant to section 38-33.3-209.5 to provide to a unit owner prior to initiating a legal action, at least thirty days before initiating a legal action to foreclose an association lien under this section,

the association shall provide notice to the unit owner of the association's intent to foreclose the lien under this section.

(b) (I) The association shall send the notice of intent to foreclose the association lien to the unit owner or the unit owner's designated contact, if the unit owner has identified another individual to serve as a designated contact pursuant to section 38-33.3-209.5 (1.7). If the unit owner or the unit owner's designated contact has notified the association of a preference to receive notices in a language other than English pursuant to section 38-33.3-209.5 (1.7)(a)(I), the notice must be sent in the preferred language.

(II) For purposes of providing the association's notice of intent to foreclose to the unit owner, if the association does not already have the information, prior to sending the notice, the association shall request from the unit owner or the unit owner's designated contact, a telephone number for phone calls, a cellular number for texts, and an email address for emails.

(III) The association shall send the notice of intent to foreclose by certified mail, return receipt requested, and by at least two of the following means:

(A) Telephone call to a telephone number that the association has on file because the unit owner or designated contact has provided the number to the association. If the association attempts to contact the unit owner or designated contact by telephone but is unable to contact the unit owner or designated contact, the association shall, if possible, leave a voice message for the unit owner or designated contact.

(B) Text message to a cellular number that the association has on file because the unit owner or designated contact has provided the cellular number to the association;

(C) Email to an email address that the association has on file because the unit owner or designated contact has provided the email address to the association; or

(D) Regular mail, if the unit owner or designated contact has not provided a telephone number, cellular number, or email address as additional means by which to receive notices.

(c) The notice of intent to foreclose the association lien must inform the unit owner that:

(I) The association intends to file a lawsuit against the unit owner's property and that, if the court forecloses on the lien, the court will order the sale of the unit at auction to pay the delinquent assessments due to the association;

(II) Based on the sale price of the unit at auction, the unit owner could lose some or all of the unit owner's equity in the unit;

(III) Pursuant to subsection (10.3) of this section, the unit owner has a right to participate in credit counseling prior to foreclosure;

(IV) Pursuant to subsection (10.7) of this section, the unit owner has a right to participate in mediation with the association prior to foreclosure; and

(V) Pursuant to section 38-33.3-209.5 (5)(a)(V)(E), the owner has access to, and instructions on how to access, free online information through the HOA information and resources center created in section 12-10-801 (1) relating to foreclosure by an association.

(d) Unless required under another provision of law, this subsection (10.8) does not apply to a time share unit, as defined in section 38-33-110 (7).

(11) Subject to subsection (10.5) of this section, the association's lien may be foreclosed by any of the following means:

(a) In a condominium or planned community, the association's lien may be foreclosed in like manner as a mortgage on real estate; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

(I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

(II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

(b) In a cooperative whose unit owners' interests in the units are real estate as determined in accordance with the provisions of section 38-33.3-105, the association's lien must be foreclosed in like manner as a mortgage on real estate; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

(I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

(II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee

of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

(c) In a cooperative whose unit owners' interests in the units are personal property, as determined in accordance with the provisions of section 38-33.3-105, the association's lien must be foreclosed as a security interest under the "Uniform Commercial Code", title 4, C.R.S.

(11.2) No later than five business days after an association initiates legal action to foreclose a lien described in this section, the association shall provide written and electronic notice to all lienholders identified in the unit owner property records of:

(a) The right to cure the nonpayment pursuant to section 38-38-104; and

(b) The right of the unit owner to file a motion to stay the sale of the property at auction pursuant to section 38-38-109.5.

(12) (a) If a unit has been foreclosed pursuant to a lien subject to this section, the following persons shall not purchase the foreclosed unit:

(I) A member of the executive board;

(II) An employee of a community association management company representing the association;

(III) An employee of a law firm representing the association;

(IV) An immediate family member, as defined in section 2-4-401 (3.7), of an executive board member, community association management company employee, or law firm employee; or

(V) A community association management company representing the association.

(b) The prohibition on the purchase of a foreclosed unit in subsection (12)(a) of this section includes an individual or a community association management company that was, at any time during the five-year period immediately preceding the sale of the foreclosed unit, an individual or a community association management company described in subsection (12)(a) of this section. The prohibition in this section also includes a business entity that was, at any time during the five-year period immediately preceding the sale of the foreclosed unit, owned by or affiliated with an individual or community association management company described in subsection (12)(a) of this section.

(13) A person that purchases a unit through the foreclosure of a lien under this section acquires the unit subject to any covenants or limitations on the use or sale of the unit to which the previous unit owner was subject.

(14) As used in this section, unless the context otherwise requires, "assessment" means a payment for common expense obligations of unit owners based on a periodic budget adopted by

the association under section 38-33.3-315 (1), or a payment for limited common elements of unit owners, and includes fees specific to delinquent payments and reasonable collection costs for collecting delinquent payments.

Source: L. 91: Entire article added, p. 1753, § 1, effective July 1, 1992. **L. 93:** (1), (2)(b), (4), and (8) amended and (2)(d) added, p. 653, § 21, effective April 30. **L. 98:** (1) amended, p. 485, § 19, effective July 1. **L. 2013:** (11)(a) and (11)(b) amended, (HB 13-1276), ch. 351, p. 2036, § 2, effective January 1, 2014. **L. 2014:** (2)(c) amended, (HB 14-1322), ch. 296, p. 1241, § 16, effective August 6. **L. 2022:** (1), (2)(d), and (7) amended and (12) added, (HB 22-1137), ch. 367, p. 2616, § 4, effective August 10. **L. 2024:** (10.5), (10.6), (10.7), and (13) added and IP(11) and (12) amended, (HB 24-1337), ch. 422, p. 2882, § 3, effective August 7. **L. 2025:** (10.3), (10.8), (11.2), and (14) added, (HB 25-1043), ch. 433, p. 2500, § 4, effective October 1.

ANNOTATION

Due process requires homeowners associations to make a good faith, rather than highly technical, effort to effectuate actual notice to a homeowner before foreclosing on their property. C & C Invs. v. Hummel, 2022 COA 42, 514 P.3d 328.

Where an association is misnamed in its recorded lien statement, the misnomer does not affect its right to foreclose, because this section does not require an association to record a statement to perfect the statutory lien. In the absence of evidence that the misnomer frustrated the identification of the association or caused confusion to the defendants, the association is entitled to foreclose the lien. Sunstone at Colo. Springs Homeowners Ass'n v. White, 56 P.3d 127 (Colo. App. 2002).

In addition to common expense assessments, a special priority lien held by a homeowners' association under subsection (2)(b)(I) may include late charges, attorney fees, fines, and interest. First Atl. Mortgage v. Sunstone N. Homeowners Ass'n, 121 P.3d 254 (Colo. App. 2005).

Upon foreclosure by the lender, condominium association's lien for unpaid assessments was senior to that of the lender's first deed of trust to the extent of six months of assessments. The association has a super-priority lien over the lender's otherwise senior deed of trust in the event of a foreclosure commenced by the association or the lender, which lien is limited to delinquent assessments accruing within six months of the initiation of foreclosure proceedings. Further, the association's super-priority lien includes interest, charges, late charges, fines, and attorney fees so long as the total does not exceed the limit. BA Mortg. v. Quail Creek Condo. Ass'n, 192 P.3d 447 (Colo. App. 2008); In re Lopez, 512 B.R. 663 (Bankr. D. Colo. 2014).

Applied in BA Mortg. v. Quail Creek Condo. Ass'n, 192 P.3d 447 (Colo. App. 2008).

38-33.3-316.3. Collections - limitations - violations.

(1) In collecting past-due assessments and other delinquent payments under this article, an association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, shall:

(a) Adopt and comply with a collections policy that meets the requirements of section 38-33.3-209.5 (5); and

(b) Make a good-faith effort to coordinate with the unit owner to set up a payment plan that meets the requirements of this section; except that:

(I) This section does not apply if the unit owner does not occupy the unit and has acquired the property as a result of:

(A) A default of a security interest encumbering the unit; or

(B) Foreclosure of the association's lien; and

(II) The association or a holder or assignee of the association's debt is not obligated to negotiate a payment plan with a unit owner who has previously entered into a payment plan under this section.

(2) A payment plan negotiated between the association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, and the unit owner pursuant to this section must permit the unit owner to pay off the deficiency in equal installments over a period of at least eighteen months. Nothing in this section prohibits an association or a holder or assignee of the association's debt from pursuing legal action against a unit owner if the unit owner fails to comply with the terms of the unit owner's payment plan. A unit owner's failure to remit payment of three or more agreed-upon installments pursuant to section 38-33.3-209.5 (7)(a)(III)(B), or to remain current with regular assessments as they come due during the eighteen-month period, constitutes a failure to comply with the terms of the unit owner's payment plan.

(3) Repealed.

(3.5) An association or the holder or assignee of the association's debts shall not foreclose a lien created under section 38-33.3-316 if the unit owner is in compliance with the terms of a payment plan required by this section.

(4) If a unit owner who has both unpaid assessments and unpaid fines, fees, or other charges makes a payment to the association, the association shall apply the payment first to the

assessments owed and any remaining amount of the payment to the fines, fees, or other charges owed.

(5) If an association has violated any foreclosure laws, the unit owner in relation to whom the violation occurred may, within five years after the violation occurred, file civil suit in a court of competent jurisdiction against the association to seek damages. The court may award the unit owner damages in an amount of up to twenty-five thousand dollars, plus costs and reasonable attorney fees, if the unit owner proves the violation by a preponderance of the evidence.

Source: L. 2013: Entire section added, (HB 13-1276), ch. 351, p. 2037, § 3, effective January 1, 2014. **L. 2022:** (2) amended, (3) repealed, and (4) and (5) added, (HB 22-1137), ch. 367, p. 2617, § 5, effective August 10. **L. 2024:** (3.5) added, (HB 24-1337), ch. 422, p. 2884, § 4, effective August 7.

38-33.3-316.5. Time share estate - foreclosure - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Junior lienor" has the same meaning as set forth in section 38-38-100.3 (12), C.R.S.

(b) "Obligor" means the person liable for the assessment levied against a time share estate pursuant to section 38-33.3-316 or the record owner of the time share estate.

(c) "Time share estate" has the same meaning as set forth in section 38-33-110 (5).

(2) A plaintiff may commence a single judicial foreclosure action pursuant to section 38-33.3-316 (11), joining as defendants multiple obligors with separate time share estates and the junior lienors thereto, if:

(a) The judicial foreclosure action involves a single common interest community;

(b) The declaration giving rise to the right of the association to collect assessments creates default and remedy obligations that are substantially the same for each obligor named as a defendant in the judicial foreclosure action;

(c) The action is limited to a claim for judicial foreclosure brought pursuant to section 38-33.3-316 (11); and

(d) The plaintiff does not allege, with respect to any obligor, that the association's lien is prior to any security interest described in section 38-33.3-316 (2)(a)(II), even if such a claim could be made pursuant to section 38-33.3-316 (2)(b)(I).

(3) In a judicial foreclosure action in which multiple obligors with separate time share estates and the junior lienors thereto have been joined as defendants in accordance with this section:

(a) In addition to any other circumstances where severance is proper under the Colorado rules of civil procedure, the court may sever for separate trial any disputed claim or claims;

(b) If service by publication of two or more defendants is permitted by law, the plaintiff may publish a single notice for all joined defendants for whom service by publication is permitted, so long as all information that would be required by law to be provided in the published notice as to each defendant individually is included in the combined published notice. Nothing in this paragraph (b) shall be interpreted to allow service by publication of any defendant if service by publication is not otherwise permitted by law with respect to that defendant.

(c) The action shall be deemed a single action, suit, or proceeding for purposes of payment of filing fees, notwithstanding any action by the court pursuant to paragraph (a) of this subsection (3), so long as the plaintiff complies with subsection (2) of this section.

(4) Notwithstanding that multiple obligors with separate time share estates may be joined in a single judicial foreclosure action, unless otherwise ordered by the court, each time share estate foreclosed pursuant to this section shall be subject to a separate foreclosure sale, and any cure or redemption rights with respect to such time share estate shall remain separate.

(5) The plaintiff in an action brought pursuant to this section is deemed to waive any claims against a defendant for a deficiency remaining after the foreclosure of the lien for assessment and for attorney fees related to the foreclosure action.

Source: L. 2008: Entire section added, p. 1522, § 1, effective August 5.

38-33.3-317. Association records - rules - timely transfer of association money and records to new management company or the association - penalty - civil action - damages - attorney fees.

(1) In addition to any records specifically defined in the association's declaration or bylaws or expressly required by section 38-33.3-209.4 (2), the association must maintain the following, all of which shall be deemed to be the sole records of the association for purposes of document retention and production to owners:

(a) Detailed records of receipts and expenditures affecting the operation and administration of the association;

(b) Records of claims for construction defects and amounts received pursuant to settlement of those claims;

(c) Minutes of all meetings of its unit owners and executive board, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by any committee of the executive board;

(d) Written communications among, and the votes cast by, executive board members that are:

(I) Directly related to an action taken by the board without a meeting pursuant to section 7-128-202, C.R.S.; or

(II) Directly related to an action taken by the board without a meeting pursuant to the association's bylaws;

(e) The names of unit owners in a form that permits preparation of a list of the names of all unit owners and the physical mailing addresses at which the association communicates with them, showing the number of votes each unit owner is entitled to vote; except that this paragraph (e) does not apply to a unit, or the owner thereof, if the unit is a time-share unit, as defined in section 38-33-110 (7);

(f) Its current declaration, covenants, bylaws, articles of incorporation, if it is a corporation, or the corresponding organizational documents if it is another form of entity, rules and regulations, responsible governance policies adopted pursuant to section 38-33.3-209.5, and other policies adopted by the executive board;

(g) Financial statements as described in section 7-136-106, C.R.S., for the past three years and tax returns of the association for the past seven years, to the extent available;

(h) A list of the names, electronic mail addresses, and physical mailing addresses of its current executive board members and officers;

(h.5) A list of the current amounts of all unique and extraordinary fees, assessments, and expenses that are chargeable by the association in connection with the purchase or sale of a unit and are not paid for through assessments, including transfer fees, record change fees, and the charge for a status letter or statement of assessments due;

(h.6) All documents included in the association's annual disclosures made pursuant to section 38-33.3-209.4.

(i) Its most recent annual report delivered to the secretary of state, if any;

(j) Financial records sufficiently detailed to enable the association to comply with section 38-33.3-316 (8) concerning statements of unpaid assessments;

(k) The association's most recent reserve study, if any;

(l) Current written contracts to which the association is a party and contracts for work performed for the association within the immediately preceding two years;

(m) Records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners;

(n) Ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate;

(o) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members; and

(p) All written communications within the past three years to all unit owners generally as unit owners.

(2) (a) Subject to subsections (3), (3.5), and (4) of this section, all records maintained by the association must be available for examination and copying by a unit owner or the owner's authorized agent. The association may require unit owners to submit a written request, describing with reasonable particularity the records sought, at least ten days prior to inspection or production of the documents and may limit examination and copying times to normal business hours or the next regularly scheduled executive board meeting if the meeting occurs within thirty days after the request. Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations of the association to the contrary, the association may not condition the production of records upon the statement of a proper purpose.

(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) Records maintained by an association may be withheld from inspection and copying to the extent that they are or concern:

(a) Architectural drawings, plans, and designs, unless released upon the written consent of the legal owner of the drawings, plans, or designs;

(b) Contracts, leases, bids, or records related to transactions to purchase or provide goods or services that are currently in or under negotiation;

(c) Communications with legal counsel that are otherwise protected by the attorney-client privilege or the attorney work product doctrine;

(d) Disclosure of information in violation of law;

(e) Records of an executive session of an executive board;

(f) Individual units other than those of the requesting owner; or

(g) The names and physical mailing addresses of unit owners if the unit is a time-share unit, as defined in section 38-33-110 (7).

(3.5) Records maintained by an association are not subject to inspection and copying, and they must be withheld, to the extent that they are or concern:

(a) Personnel, salary, or medical records relating to specific individuals; or

(b) (I) Personal identification and account information of members and residents, including bank account information, telephone numbers, electronic mail addresses, driver's license numbers, and social security numbers; except that, notwithstanding section 38-33.3-104, a member or resident may provide the association with prior written consent to the disclosure of, and the association may publish to other members and residents, the person's telephone number, electronic mail address, or both. The written consent must be kept as a record of the association and remains valid until the person withdraws it by providing the association with a written notice of withdrawal of the consent. If a person withdraws his or her consent, the association is under no obligation to change, retrieve, or destroy any document or record published prior to the notice of withdrawal.

(II) As used in this paragraph (b), written consent and notice of withdrawal of the consent may be given by means of a "record", as defined in the "Uniform Electronic Transactions Act", article 71.3 of title 24, C.R.S., if the parties so agree in accordance with section 24-71.3-105, C.R.S.

(4) The association may impose a reasonable charge, which may be collected in advance and may cover the costs of labor and material, for copies of association records. The charge may not exceed the estimated cost of production and reproduction of the records, including the costs of copying, mailing, and any necessary special processing.

(4.5) If the association fails to allow inspection or copying of records in accordance with this section within thirty calendar days after receipt of a written request submitted by certified mail, return receipt requested, and payment of any fees required pursuant to subsection (4) of this section, the association is liable for penalties in the amount of fifty dollars per day, commencing on the eleventh business day after the association received the written request, up to a maximum of five hundred dollars or the unit owner's actual damages sustained as a result of the refusal, whichever is greater.

(5) A right to copy records under this section includes the right to receive copies by photocopying or other means, including the receipt of copies through an electronic transmission if available, upon request by the unit owner.

(6) An association is not obligated to compile or synthesize information.

(7) Association records and the information contained within those records shall not be used for commercial purposes.

(8) Subsections (1)(h.5), (1)(h.6), and (4.5) of this section, as added by House Bill 21-1229, enacted in 2021, and subsection (4) of this section, as amended by House Bill 21-1229, enacted in 2021, do not apply to an association that includes time share units, as defined in section 38-33-110 (7).

(9) (a) (I) When an association, other than a self-managed association that has not retained an association management company, terminates or fails to renew an agreement with its association management company, within forty-five days after the termination or failure to renew the agreement, the former association management company shall deliver to the new association management company or to the association, at no charge to the association, all association property, including money, financial accounts, account books, financial records, insurance policies, contracts, business documents, invoices, receipts, subscriptions, account information, account passwords, keys, and any other property or records of the association, or information concerning the association.

(II) Subsection (9)(a)(I) of this section does not require a former association management company to submit any proprietary software or computer programs to the association, so long as the association's data or records within the proprietary software or computer program are submitted to the association.

(b) Unless otherwise agreed in writing between the association and the former association management company, the former association management company that fails to comply with the requirement set forth in subsection (9)(a)(I) of this section:

(I) Is liable to the association for all interest and late fees on late payments made by the association due to the former association management company's failure to comply with the requirement set forth in subsection (9)(a)(I) of this section and any other damages incurred by the association due to the inability of the association to access the association's accounts, money, property, or information specified in subsection (9)(a)(I) of this section;

(II) Shall pay to the association two hundred fifty dollars for each business day that the former association management company fails to comply with the requirement set forth in subsection (9)(a)(I) of this section; and

(III) In any civil action to enforce this subsection (9), if the former association management company's violation is found to be willful, shall be liable to the association for treble the association's actual damages plus the association's reasonable attorney fees and court costs.

Source: L. 91: Entire article added, p. 1756, § 1, effective July 1, 1992. **L. 2005:** Entire section amended, p. 1387, § 18, effective January 1, 2006. **L. 2006:** (2), (3), (4), and (7) amended, p. 1224, § 13, effective May 26. **L. 2012:** Entire section R&RE, (HB 12-1237), ch. 232, p. 1016, § 1, effective January 1, 2013. **L. 2014:** (3.5) amended, (HB 14-1125), ch. 66, p. 290, § 1, effective August 6. **L. 2021:** (1)(h.5), (1)(h.6), (4.5) and (8) added and (4) amended, (HB 21-1229), ch. 409, p. 2709, § 4, effective September 7. **L. 2026:** (9) added, (HB 26-1099), ch. 42, p. 196, § 4, effective August 12.

ANNOTATION

Under subsections (1) and (2)(a), an association must make reasonably available records it owns and its agent maintains even if the association itself does not actually create or keep the records. Glenwright v. St. James Place Condo. Ass'n, 197 P.3d 264 (Colo. App. 2008) (decided prior to the 2005 amendment).

Association's bank statements can constitute "detailed records" under subsection (1)(a). Seaman v. Heather Gardens Ass'n, 2023 COA 125, 546 P.3d 134.

Records created by third parties, such as statements created by a bank, can constitute "records maintained by" an association under subsection (2)(a). Seaman v. Heather Gardens Ass'n, 2023 COA 125, 546 P.3d 134.

38-33.3-318. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has the power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

Source: L. 91: Entire article added, p. 1756, § 1, effective July 1, 1992.

38-33.3-319. Other applicable statutes.

To the extent that provisions of this article conflict with applicable provisions in the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., the "Uniform Partnership Law", article 60 of title 7, C.R.S., the "Colorado Uniform Partnership Act (1997)", article 64 of title 7, C.R.S., the "Colorado Uniform Limited Partnership Act of 1981", article 62 of title 7, C.R.S., article 1 of this title, article 55 of title 7, C.R.S., article 33.5 of this title, and section 39-1-103 (10), C.R.S., and any other laws of the state of Colorado which now exist or which are subsequently enacted, the provisions of this article shall control.

Source: L. 91: Entire article added, p. 1756, § 1, effective July 1, 1992. **L. 93:** Entire section amended, p. 865, § 41, effective July 1, 1994. **L. 97:** Entire section amended, p. 919, § 18, effective January 1, 1998; entire section amended, p. 764, § 37, effective July 1, 1998.

Editor's note: Amendments to this section by House Bill 97-1237 and Senate Bill 97-91 were harmonized.

PART 4

REGISTRATION

38-33.3-401. Registration - annual fees - data collection and enforcement actions.

(1) Every unit owners' association shall register annually with the director of the division of real estate, in the form and manner specified by the director.

(2) (a) Except as otherwise provided in subsection (2)(b) of this section, the unit owners' association shall submit with its annual registration a fee in the amount set by the director in accordance with section 12-10-215 and shall include the following information, updated within ninety days after any change:

(I) The name of the association, as shown in the Colorado secretary of state's records;

(II) The name of the association's management company, managing agent, or designated agent, which may be the association's registered agent, as shown in the Colorado secretary of state's records, or any other agent that the executive board has designated for purposes of registration under this section;

(III) The physical address of the HOA;

(IV) A valid address; email address, if any; website, if any; and telephone number for the association or its management company, managing agent, or designated agent; and

(V) The number of units in the association.

(b) A unit owners' association is exempt from the fee, but not the registration requirement, if the association:

(I) Has annual revenues of five thousand dollars or less; or

(II) Is not authorized to make assessments and does not have revenue.

(3) A registration is valid for one year. The right of an association that fails to register, or whose annual registration has expired, to impose or enforce a lien for assessments under section 38-33.3-316 or to pursue an action or employ an enforcement mechanism otherwise available to it under section 38-33.3-123 is suspended until the association is validly registered pursuant to this section. A lien for assessments previously recorded during a period in which the association was validly registered or before registration was required pursuant to this section is not extinguished by a lapse in the association's registration, but a pending enforcement proceeding related to the lien is suspended, and an applicable time limit is tolled, until the association is validly registered pursuant to this section. An association's registration in compliance with this section revives a previously suspended right without penalty to the association.

(3.2) As part of an association's annual registration, the association shall submit the following information to the director of the division of real estate, in the form and manner determined by the director of the division of real estate:

(a) For the twelve-month period immediately preceding the association's annual registration, the number of unit owners that were, at any time during the twelve-month period, six or more calendar months delinquent in the payment of an annual assessment or special assessment;

(b) For the twelve-month period immediately preceding the association's annual registration, for unpaid annual assessments or special assessments or related fees or attorney fees:

(I) The number of unit owners against which the association or its designee obtained a judgment;

(II) The number of payment plans entered into between the association and a unit owner pursuant to section 38-33.3-316.3; and

(III) The number of foreclosure actions filed against unit owners pursuant to section 38-33.3-316; and

(c) Any other information specified by the director of the division of real estate relating to the collection of assessments and the foreclosure of the association's liens.

(4) (a) A registration is valid upon the division of real estate's acceptance of the information required by paragraph (a) of subsection (2) of this section and the payment of applicable fees.

(b) An association's registration number, and an electronic or paper confirmation issued by the division of real estate, are prima facie evidence of valid registration.

(c) The director of the division of real estate's final determinations concerning the validity or timeliness of registrations under this section are subject to judicial review pursuant to section 24-4-106 (11), C.R.S.; except that the court shall not find a registration invalid based solely on technical or typographical errors.

Source: L. 2010: Entire part added, (HB 10-1278), ch. 365, p. 1723, § 5, effective January 1, 2011. **L. 2013:** Entire section amended, (HB 13-1134), ch. 198, p. 807, § 3, effective August 7. **L. 2019:** IP(2)(a) amended, (HB 19-1172), ch. 136, p. 1723, § 234, effective October 1. **L. 2025:** (3.2) added, (HB 25-1043), ch. 433, p. 2502, § 5, effective October 1.

38-33.3-402. Manager licensing - condition precedent for enforcement of contract terms. (Repealed)

Source: L. 2013: Entire section added, (HB 13-1277), ch. 352, p. 2040, § 2, effective January 1, 2015. **L. 2015:** Entire section amended, (HB 15-1343), ch. 216, p. 796, § 10, effective May 20. **L. 2020:** Entire section repealed, (HB 20-1402), ch. 216, p. 1057, § 66, effective June 30.

ARTICLE 33.5

Cooperative Housing Corporations - Housing for Members

38-33.5-101. Method of formation - purpose.

38-33.5-102. Requirements for articles of incorporation of cooperative housing corporations.

38-33.5-103. Provisions relating to taxes, interest, and depreciation on corporate property.

38-33.5-104. Financing of cooperative housing - stock certificates held by tenant-stockholders.

38-33.5-105. Provisions to be included in proprietary lease or right of tenancy issued by corporation.

38-33.5-106. Exemption from securities laws.