

ARTICLE 33.3
COLORADO COMMON INTEREST OWNERSHIP ACT

Annotations

Editor's note: The provisions of this act are based substantially on the "Uniform Common Interest Ownership Act", as promulgated by the National Conference of Commissioners on Uniform State Laws. Colorado did not adopt article 4 concerning protection of purchasers and the optional article 5 of said uniform act concerning administration and registration of common interest communities.

Annotations

Law reviews: For article "Colorado Common Interest Ownership Act - How it is Doing", see 25 Colo. Law. 17 (November 1996); for article, "When the Developer Controls the Homeowner Association Board: The Benevolent Dictator?", see 31 Colo. Law. 91 (January 2002).
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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.

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.

ANNOTATION

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).

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.

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.

38-33.3-106.5. Prohibitions contrary to public policy - patriotic and political expression - emergency vehicles - fire prevention - definitions.

(1) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not prohibit any of the following:

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

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

(c) (I) The display of a political sign by the owner or occupant of a unit on property within the boundaries of the unit or in a window of the unit; except that:

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

(B) An association may regulate the size and number of political signs in accordance with subparagraph (II) of this paragraph (c).

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

(A) The maximum size allowed by any applicable city, town, or county ordinance that regulates the size of political signs on residential property; or

(B) Thirty-six inches by forty-eight inches.

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

(d) The parking of a motor vehicle by the occupant of a unit 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.

(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.)

(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.

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.

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.

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.

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.

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) If a cooperative created in this state on or after July 1, 1992, but prior to July 1, 1998, contains only units restricted to nonresidential use or contains no more than ten units and is not subject to any development rights, it is subject only to sections 38-33.3-105, 38-33.3-106, and 38-33.3-107, unless the declaration provides that this entire article is applicable. If a planned community created in this state on or after July 1, 1992, but prior to July 1, 1998, contains no more than ten units and is not subject to any development rights or 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, may not exceed three hundred dollars, it is subject only to sections 38-33.3-105, 38-33.3-106, and 38-33.3-107, unless the declaration provides that this entire article is applicable.

(2) If a cooperative or planned community created in this state on or after July 1, 1998, 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, 38-33.3-106, and 38-33.3-107, unless the declaration provides that this entire article is applicable. If a planned community created in this state after July 1, 1998, 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, may not exceed four hundred dollars, as adjusted pursuant to subsection (3) of this section, it is subject only to

sections 38-33.3-105, 38-33.3-106, and 38-33.3-107, unless the declaration provides that this entire article is applicable.

(3) The four-hundred-dollar limitation set forth in subsection (2) of this section shall 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 limitation shall not be increased if the final consumer price index for the preceding calendar year did not increase and shall not be decreased if the final consumer price index for the preceding calendar year decreased.

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.

ANNOTATION

Having opted for an exemption from the Colorado Common Interest Ownership Act 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).

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 shall apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after July 1, 1992:

- (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;
- (j) 38-33.3-311;
- (k) 38-33.3-316;
- (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 shall apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after January 1, 2006:

- (a) (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 (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); and
- (m) 38-33.3-317.

(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.

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.

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, it is subject only to sections 38-33.3-105, 38-33.3-106, and 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.

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.

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 any unit owner fails to timely pay assessments or any money or sums due to the association, the association may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding.

(b) For any failure to comply with the provisions of this article or any provision of the declaration, bylaws, articles, or rules and regulations, other than the payment of assessments or any money or sums due to the association, the association, any unit owner, or any class of unit owners adversely affected by the failure to comply may seek reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding.

(c) In any civil action to enforce or defend the provisions of this article or of the declaration, bylaws, articles, or rules and regulations, the court shall award reasonable attorney fees, costs, and costs of collection to the prevailing party.

(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.

(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.

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.

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).

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 Building Co. v. Westland Meadows Owners Ass'n, Inc.*, 983 P.2d 170 (Colo. App. 1999).

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 and rev'd in part on other grounds*, 21 P.3d 860 (Colo. 2001).

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

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

(b) On or before January 1, 2007, each association shall adopt a written policy setting forth its procedure for addressing disputes arising between the association and unit owners. The association shall make a copy of this policy available to unit owners upon request.

(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 either party to the controversy 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.

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.

PART 2
CREATION, ALTERATION, AND TERMINATION
OF COMMON INTEREST COMMUNITIES

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

(1) A common interest community may be created pursuant to this article 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 recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association and in the grantor's index in the name of each person executing the declaration. 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.

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 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 July 1. **L. 93:** Entire section amended, p. 647, § 9, effective April 30.

Editor's note: Although section 51 of chapter 313, Session Laws of Colorado 1992, amended this section, effective June 2, 1992, the entire article did not take effect until July 1, 1992, in accordance with section 2 of chapter 283, Session Laws of Colorado 1991. Since the amendment cannot take effect until the section takes effect, the effective date of the amendment is reflected as July 1, 1992.

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

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).

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.

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 plat or map is not required by this article if all the information required by this section is contained in the declaration. Each plat or map must be clear and legible. Each map must contain a certification that the map contains all the information required by this section.

(2) In addition to meeting the requirements of a land survey plat as set forth in section 38-51-106, each map must show:

(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 of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;
 - (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 any vertical boundaries not shown or projected on maps recorded pursuant to subsection (4) of this section and that unit's identifying number;
 - (g) The location, with reference to established data, of horizontal boundaries, if any, not shown or projected on maps recorded pursuant to subsection (4) of this section, and that unit's identifying number;
 - (h) A legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";
 - (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) To the extent not shown or projected on the plats, maps of the units must show or project:
- (a) The location and dimensions of the vertical boundaries of each unit and that unit's identifying number;
 - (b) Horizontal boundaries, if any, with reference to all established data, and that unit's identifying number;
 - (c) Any units in which the declarant has reserved the right to create additional units or common elements, identified appropriately; and
 - (d) The approximate location and dimensions of limited common elements, including porches, balconies, and patios, other than parking spaces and other than common elements described in section 38-33.3-202 (1) (b) and (1) (d).
- (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.

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.

ANNOTATION

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).

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; and
 - (i) The association's responsible governance policies adopted under section 38-33.3-209.5.
- (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 e-mail; 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) (h.5), 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.

38-33.3-209.5. Responsible governance policies.

- (1) To promote responsible governance, associations shall:
- (a) Maintain accurate and complete accounting records; and
 - (b) Adopt policies, procedures, and rules and regulations concerning:
 - (I) Collection of unpaid assessments;
 - (II) Handling of conflicts of interest involving board members;
 - (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; and
 - (VIII) Procedures for addressing disputes arising between the association and unit owners.

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.

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.

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.

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) 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.

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) 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.

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

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.

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.

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.

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;
 - (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) 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;
 - (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.

ANNOTATION

Law reviews. For article, "The Construction Defect Action Reform Act", see 30 Colo. Law. 121 (October 2001).

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).

38-33.3-303. Executive board members and officers - powers and duties - audit.

(1) 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.

(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) 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.

(4) (a) Within ninety days after adoption of any proposed budget for the common interest community, the executive board shall mail, by ordinary first-class mail, or otherwise deliver 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. Such meeting shall 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. 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. In the event that 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) (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; and
- (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.

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.

ANNOTATION

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.

- (1) (a) In the event the executive board, pursuant to section 38-33.3-302 (1) (d), institutes an action asserting defects in the construction of five or more units, the provisions of this section shall apply. For purposes of this section, "action" shall have the same meaning as set forth in section 13-20-803 (1), C.R.S.
- (b) The executive board shall substantially comply with the provisions of this section.
- (2) (a) Prior to the service of the summons and complaint on any defendant with respect to an action governed by this section, the executive board shall mail or deliver written notice of the

commencement or anticipated commencement of such action to each unit owner at the last known address described in the association's records.

(b) The notice required by paragraph (a) of this subsection (2) shall state a general description of the following:

(I) The nature of the action and the relief sought; and

(II) The expenses and fees that the executive board anticipates will be incurred in prosecuting the action.

(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.

Source: L. 2001: Entire section added, p. 390, § 3, effective August 8.

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.

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.

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 web site 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;

(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.

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 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 it provides otherwise.

(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.

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.

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.

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 cancelled 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 thereof shall bear interest at the rate established by the association not exceeding twenty-one 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.

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).

38-33.3-316. Lien for assessments.

(1) 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. Unless the declaration otherwise provides, fees, charges, late charges, attorney fees, 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) are enforceable as assessments under this article. The amount of the lien shall include all those items set forth in this section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid association's acceleration of installment obligations.

(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 15-11-201, C.R.S.

(d) The association shall have the statutory lien described in subsection (1) of this section for any assessment levied or fine imposed after June 30, 1992. Such lien shall have 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) The association shall be entitled to costs and reasonable attorney fees incurred by the association in a judgment or decree in any action or suit brought by the association under this section.

(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.

(11) 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.

(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.

(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.

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.

ANNOTATION

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).

38-33.3-317. Association records.

(1) (a) The association shall keep financial records sufficiently detailed to enable the association to comply with section 38-33.3-316 (8) concerning statements of unpaid assessments.

(b) The association shall keep as permanent records minutes of all meetings of unit owners and the executive board, a record of all actions taken by the unit owners or executive board by written ballot or written consent in lieu of a meeting, a record of all actions taken by a committee of the executive board in place of the executive board on behalf of the association, and a record of all waivers of notices of meetings of unit owners and of the executive board or any committee of the executive board.

(c) (I) The association or its agent shall maintain a record of unit owners in a form that permits preparation of a list of the names and addresses of all unit owners, showing the number of votes each unit owner is entitled to vote.

(II) Notwithstanding section 38-33.3-117 (1) (l), this paragraph (c) 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).

(d) The association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), all financial and other records shall be made reasonably available for examination and copying by any unit owner and such owner's authorized agents.

(b) (I) Notwithstanding paragraph (a) of this subsection (2), a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a unit owner's interest as a unit owner without consent of the executive board.

(II) Without limiting the generality of subparagraph (I) of this paragraph (b), without the consent of the executive board, a membership list or any part thereof may not be:

(A) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the unit owners in an election to be held by the association;

(B) Used for any commercial purpose; or

(C) Sold to or purchased by any person.

(3) The association may charge a fee, which may be collected in advance but which shall not exceed the association's actual cost per page, for copies of association records.

(4) As used in this section, "reasonably available" means available during normal business hours, upon notice of five business days, or at the next regularly scheduled meeting if such meeting occurs within thirty days after the request, to the extent that:

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

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

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

(5) In addition to the records specified in subsection (1) of this section, the association shall keep a copy of each of the following records at its principal office:

(a) Its articles of incorporation, if it is a corporation, or the corresponding organizational documents if it is another form of entity;

(b) The declaration;

(c) The covenants;

(d) Its bylaws;

- (e) Resolutions adopted by its executive board relating to the characteristics, qualifications, rights, limitations, and obligations of unit owners or any class or category of unit owners;
 - (f) The minutes of all unit owners' meetings, and records of all action taken by unit owners without a meeting, for the past three years;
 - (g) All written communications within the past three years to unit owners generally as unit owners;
 - (h) A list of the names and business or home addresses of its current directors and officers;
 - (i) Its most recent annual report, if any; and
 - (j) All financial audits or reviews conducted pursuant to section 38-33.3-303 (4) (b) during the immediately preceding three years.
- (6) This section shall not be construed to affect:
- (a) The right of a unit owner to inspect records:
 - (I) Under corporation statutes governing the inspection of lists of shareholders or members prior to an annual meeting; or
 - (II) If the unit owner is in litigation with the association, to the same extent as any other litigant; or
 - (b) The power of a court, independently of this article, to compel the production of association records for examination on proof by a unit owner of proper purpose.
- (7) This section shall not be construed to invalidate any provision of the declaration, bylaws, the corporate law under which the association is organized, or other documents that more broadly defines records of the association that are subject to inspection and copying by unit owners, or that grants unit owners freer access to such records; except that the privacy protections contained in paragraph (b) of subsection (2) of this section shall supersede any such provision.

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.

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.