ORTEN & HINDMAN
Attorneys at Law

FREQUENTLY ASKED QUESTIONS: SB 100

SB 100 IN GENERAL

1) When does SB 100 take effect?

SB 100's provisions concerning xeriscaping, patriotic and political expression, parking of emergency vehicles, fire mitigation, and amendment of declarations took effect immediately on the signing of the bill, which was June 6, 2005. All other provisions will take effect on January 1, 2006.

2) Does SB 100 apply to pre and post-CCIOA communities?

SB 100 applies to both pre and post-CCIOA common interest communities as defined by CCIOA except for the provision dealing with association insurance as well as some exemptions for time-share communities. In addition, developer-controlled associations are exempt from the requirement to make certain information available to homeowners 90 days after the end of each fiscal year per section 38-33.3-209.4(2).

3) What happens if an association does not comply with SB 100's requirements?

There are no civil or criminal penalties for failing to comply with CCIOA, including the additions and amendments that SB 100 brought to the statute. However, homeowners can bring associations to court for violating any provision of CCIOA. In the event an association loses such a case, by failing to comply with CCIOA, section 38-33.3-123(1)(a)(c) of CCIOA provides that the prevailing party in such an action *shall* be entitled to costs and reasonable attorneys fees incurred in bringing the action. These fees often run around $10,000 to $15,000. Associations, therefore, should be careful to comply with CCIOA as amended to avoid the potential of having to pay both its attorneys fees *and* that of the prevailing party owner.

4) Will SB 100 have a positive or negative impact on Colorado's homeowner associations?

There is no easy answer to this question. SB 100 has provisions that will likely have a positive impact, as well as provisions that will likely have a negative impact on homeowner associations.

SB 100's requirements for annual disclosures, mandatory policies, and homeowner education, as well as the provision encouraging board member education, will educate homeowners and board members in their associations' operation and their respective rights and responsibilities. A knowledgeable base of homeowners and board members will further responsible governance, having the effect of decreasing conflict and litigation.

Unfortunately, other sections of SB 100 overlook the realities of operating associations in the attempt to fashion a "one-size fits all" answer for all associations. Additionally, parts of SB 100 are ambiguous and conflict with each other, which will lead to widespread confusion, difficulty in compliance, and increased conflict and litigation.

Only time will tell whether the positive aspects of SB 100 will outweigh its negatives.

GENERAL GOVERNANCE

Responsible Governance Policies and Procedures

1) What written policies and procedures must an association have by January 1, 2006?

SB 100 requires that an association have written procedures and policies regarding: 1) Collection of unpaid assessments; 2) Handling of board member conflicts of interest; 3) Conduct of meetings; 4) Enforcement of covenants and rules; 5) Owner inspection and copying of association records; 6) Investment of reserve funds; and 7) Adoption and amendment of policies, procedures, and rules.

2) How comprehensive must these written policies and procedures be?

SB 100 does not specify how comprehensive the policies and procedures must be. However, the intent behind this requirement is to have policies and procedures in place so that owners can understand how their association operates and the possible consequences of their actions. The more comprehensive a policy or procedure, the more likely this goal will be achieved.

Notice of Unit Owner Meetings and Owner Participation in Association Meetings

1) What notice requirements for owner meetings does SB 100 place on associations?

In addition to giving notice of meetings as specified in its bylaws, an association must physically post the notice of any owner meeting – annual or special – in a conspicuous place, if at all feasible and practicable. This physical posting of the meeting notice must be done in addition to any electronic notice that the association chooses or is required to give as discussed below.

2) What types of places would be considered conspicuous?

Examples of conspicuous places where physical notice of meetings can be posted to comply with this section are stairways, mail kiosks (if not owned by the United States Postal Service), elevators, court yards, bulletin boards, and community centers.

3) My community is made up of single family detached homes. The way our community is structured leaves it without any place to post a meeting notice. How can we comply with SB 100 conspicuous notice requirement?

SB 100 requires the physical posting of a notice only if it's feasible and practicable. If there *really* is no place for a notice to be posted within your community, your association is not out of compliance with SB 100 for its inability to physically post a notice of its upcoming owners meeting.

4) Does this requirement to post notice apply to board member meetings too?

While not clear in the statute, in our opinion, this notice requirement applies only to unit owner meetings.

5) Several homeowners have requested that they receive meeting notices via their email. Does my association have to comply with these requests?

Your association must comply with these requests only if it "has the ability to give electronic notice." SB 100 does not define what the ability to give electronic notice means, but a reasonable interpretation is that such ability is present if your association has its own email address. If your association has the ability to give electronic notice, it must provide electronic notice to those who request it and provide the association with his or her e-mail.

6) I read this section of SB 100 (38-33.3-308) and am very confused. Must boards automatically allow owners to speak at board meetings or not?

There is a reason you find this section of SB 100 so confusing – it contains inconsistencies. One section states that owners may only speak at board

meetings with express permission, while another section states that owners must be allowed to speak before the board takes formal action on any item under discussion.

These two provisions are difficult to resolve and as such different interpretations exist. The intent of the statute was to allow for board owner participation in the governance of his or her association and to allow board members to have the benefit of input from owners before they take formal action (vote) on an item under consideration.

In our opinion, we believe that the provision that states that a homeowner may speak at board meetings only when expressly authorized by a majority vote of a quorum of the board applies to general owner participation during the meeting (i.e. an owner wanting to add a piece of information during a discussion before the item is up for formal action) or the creation of a "homeowners' forum" for board meetings. Regardless of whether boards choose to allow owners to participate in this manner, boards must allow owners an opportunity to speak at an appropriate time before taking formal action (voting). When in doubt of how much participation to allow owners, boards should err on the side of more participation than less. Remember that a board does not have to answer the owner's questions or engage in any dialogue with him or her unless it so desires.

7) May boards have regulations regarding owner participation at board meetings?

Yes. Boards may regulate owner participation by providing time limitations on speaking or restricting the number of people who may speak. Boards must, however, allow for a reasonable number of people to speak to each side of an issue if there is group of people who wish to speak.

8) Must a board distribute to the owners copies of all the materials that the board has?

No. The board has no duty to distribute documents it might be considering to the owners.

9) May a board still go into an executive session?

Yes. SB 100 does not affect a board's ability to go into executive session.

10) Does SB 100 give owners the right to speak before the board takes any formal action during an executive session?

SB 100 does not specifically exempt executive sessions from its provision that provides for owners to speak before the board takes any formal action.

However, the intent of the executive session provision is to allow boards to deliberate and vote on items without the presence of owners under the narrow circumstances defined in 38-33.3-308(3). Therefore, it is our opinion that a board does not need to allow owners to speak before taking formal action during executive sessions.

11) Does a renter qualify as a designated agent of the owner for attending and participating in meetings?

Yes. If an owner designates his or renter as the owner's representative in writing, the renter has same rights (attendance, participation) as an owner at the board meeting, and as well as voting rights through a valid proxy at an owners' meeting.

Standards for Approval or Denial of Unit Owners' Architectural or Landscaping Applications

1) My association has written architectural and landscaping standards, but they are not located in my association's declaration or its rules and regulations or its bylaws. Is that okay?

No. SB 100 requires an association's architectural and landscaping standards to be in the association's declaration, its rules and regulations, or its bylaws.

Amendment of Declaration – Allowable Percentage of Required Affirmative Votes and First Mortgagee Notification

1) How does SB 100 change the provisions contained in an association's declaration that provides the procedure for amending the declaration?

SB 100 states that an association's declaration may not require the affirmative vote of any percentage higher than 67% to amend. Any percentage higher than that will be deemed to specify a percentage of 67%.

2) My association's declaration states that it may be amended only by an affirmative vote of 80%. Do we need to amend our declaration to comply with SB 100?

No. Any percentage higher than 67% will be deemed to read 67%. If your association would like a percentage lower than 67% (but higher than 50%), it will need to amend its declaration. However, in amending the declaration, your association now will only need an affirmative vote of 67%, not 80%.

3) Does this affect the court petitioning process that an association may use to amend its declaration?

No. This change does not affect the court petitioning process.

4) Does SB 100 affect how an association can get the affirmative assent of first mortgagees when an association's documents require such assent to amend the declaration?

Yes. Rather then having to get an affirmative answer from a first mortgagee, an association can deem that the first mortgagee assented if it: 1) sends a dated, written notice with a copy of the proposed amendment by certified mail to each mortgagee at its most recent address as shown on the recorded deed of trust or its recorded assignment; AND 2) has the dated notice printed in full with information on how to obtain a copy of the proposed amendment – on separate occasions at least one week apart – in a newspaper located in the county in which the association is located. If a first mortgagee does not give a negative response within 60 days, it will be considered to have assented.

5) If an association mails certified letters to the most recent address on the recorded deed or recorded assignment, but the first mortgagee has changed location without notification, has the association met its notification requirements?

Yes.

6) My association's declaration requires 100% first mortgagee approval for amendments to the declaration. Does SB 100 change this?

No. SB 100 does not alter the percentage of first mortgagee approval needed to amend an association's declaration.

Association Records – Retention & Owner Inspection:

1) What must an association keep as permanent records?

An association must keep the following as permanent records: 1) minutes of all board and owner meetings; 2) all actions taken by the board or owners by written ballot or written consent instead of holding a meeting; 3) all actions taken by a committee on the behalf of the board instead of the board acting on behalf of the association; and 4) all waivers of the notice requirements for owner meetings, board member meetings, or committee meetings.

2) What other records must an association keep?

An association must keep a copy of the following records at its principal office: 1) articles of incorporation; 2) the declaration; 3) the covenants; 4) its bylaws; 5)

board resolutions affecting owners; 6) minutes of all owner meetings and records of any actions taken by owners without a meeting in the past three years; 7) all written communications to owners generally as unit owners within the past three years; 8) a list of the names and the business or home addresses of the current board and its officers; 9) its most recent annual report, if any; and 10) all financial audits or reviews required by section 38-33.3-303(4)(b) conducted in the last three years.

3) May associations charge for copying these records for owners?

Except for any documents posted on a website to achieve compliance with an association's disclosure requirements under 38-33.3-209.4, an association may charge its actual cost for providing copies of these documents.

4) What is an association's actual cost?

An association's actual cost is a reasonable fee that may include personnel and equipment used for the search, retrieval, and copying of the records. Actual cost does not take in account the time spent watching the owner inspect the records.

5) Can an owner demand to inspect and copy the records for any reason?

No. An association must allow an owner to inspect and copy records when an owner's request to do so is made in good faith and for a proper purpose and has not been made solely to be frivolous or vexatious. The owner's purpose should also be association-related. For example, requests for names and addresses to market private commercial enterprise are not appropriate, but an owner's request for names and addresses to send out information on an association initiative is appropriate.

6) What types of records may an association withhold from a unit owner?

Any records protected by the attorney-client privilege, as well as anything included in the association's confidentiality policy.

6) Does a renter qualify as a designated agent of the owner for inspecting records?

Yes, an owner can chose to elect his or her renter as an "agent of owner."

Required Audit or Review

1) What is an association required to do regarding financial reviews now that SB 100 is law?

An association must have an audit or review at least once every two years. The individual doing the review is to be chosen by the board and, according to SB 100, does not have to be a certified public accountant unless an audit will be performed. An audit is required if 1) the association has annual expenditures or revenues of $250,000 or more and 2) one-third of owners request an audit.

2) What is the difference between an audit and a review?

An audit represents a certified public accountant's professional affirmative guarantee that the association is financially healthy and that all its financial records are in order. A review is a more qualified assessment of an association's financial health. As opposed to the affirmative guarantee of an audit, a review is a statement that the reviewer did not find any financial problems during the more limited analysis of the association's records.

Use of Ballots and Proxies

1) How will SB 100 change the way my association elects its board members?

SB 100 requires that votes for the election of board members be taken by secret ballot. These ballots must be counted by either a neutral third party or by an owner who is not a candidate, who is present at the meeting, and who is selected at random from a pool of two or more such owners.

2) We often only have two candidates for two positions. Can we use the parliamentary procedure of acclamation instead of secret ballots?

No. SB 100 requires that secret ballots be used for *every* election of board members, regardless of how many candidates are running for how many positions.

3) To prevent fraud and for vote verification purposes, may an association "code" the ballots so that the voter's identity can be determined in the case of disputed election results?

No. SB 100's requirement for a "secret ballot" means that no information may be included on it that would ever allow the voter's identity to be determined or how that individual voted.

4) May an association still allow homeowners to give directed proxies for board member elections?

Yes, if the association uses a method that allows the proxy to be verified without identifying the voter. For example, the actual ballot or proxy can be place in a

sealed envelope that is placed in another envelope that has the owner's name and address on the front of it. In this way, the board can check that person off and verify his or her eligibility to vote. After this is done, the envelope with the ballot or proxy can be removed and added to the pile.

Board of Directors' Conflicts of Interest

1) How does SB 100 change current law on board members' conflicts of interest?

SB 100's board member conflict of interest provision is stricter than the Nonprofit Act's provision on conflicts of interest, which it overrides. Board members must still disclose if they have a conflict of interest during an open meeting. SB 100 states that the board member with a conflict of interest may still participate in the discussion, but may not vote on that matter.

2) My association's governing documents require a board member with a conflict of interest to leave the room during any discussion or vote on the issue from which the conflict arises. Is this allowed by SB 100?

Yes. Although SB 100's requirement is not as stringent as your association's governing documents, the statute specifically provides that association documents may treat conflicts of interest more strictly.

3) I think some of our board members have some confusion as to what constitutes a conflict of interest. Should my association draw up a list of such transactions?

Yes. It would be helpful to have a list of what would be considered a conflict of interest in your association's required Board Member Conflict of Interest Policy. Be sure to specify that the provided examples are not all inclusive.

REQUIRED DISCLOSURES

General Association Disclosures

1) What does SB 100 require associations to disclose?

SB 100 states that associations must make two kinds of disclosures to all its unit owners.

First, an association must provide to its unit owners once a year a written notice that states: 1) the association's name; 2) the name of any designated agent or management company for the association; 3) the physical address and telephone number for the association and any designated agent or management

company; 4) the name of the common interest community; 5) the initial date of the recording of the declaration; and 6) the declaration's reception number or book and page where the declaration is located. If an association's address, designated agent, or management company changes, the association must provide all owners with an amended notice within 90 days of the change.

Second, an association must compile and disclose the following through one of the four allowable means within 90 days after assuming control from the declarant and within 90 days after the end of each fiscal year after that: 1) the date the association's fiscal year begins; 2) the association's operating budget for the current fiscal year; 3) a list – organized by unit type – of the association's current regular and special assessments; 4) the association's annual financial statements – including any money held in reserve for the fiscal year immediately preceding the current annual disclosure; 5) the results of any financial audit or review for the fiscal year preceding the current annual disclosure; 6) a list of all association insurance policies, including property, general liability, association director and officer professional liability, and fidelity policies; 7) the association's bylaws, articles, rules and regulations; 8) the board meeting and member meeting minutes for the preceding fiscal year; and 9) the association's responsible governance policies.

2) How may an association make the disclosures necessary 90 days after assuming control from the declarant and within 90 days after the end of each fiscal year after that?

SB 100 provides associations with four means of disclosure: 1) posting the information on an internet web page with notice of the web address sent either by first-class mail or e-mail to all owners; 2) maintaining a literature table or binder at the association's principal place of business; 3) mailing the information to all owners; or 4) personally delivering the information to all owners.

3) May an association charge for compiling and disclosing this information?

No. This annual disclosure is to be counted as a common expense liability.

4) If an association chooses to make it disclosure through the maintenance of a literature binder, may it charge owners for making copies of documents within that binder?

Yes. If after disclosing the documents via a literature binder, an association is asked by an owner to make copies, it may charge for those copies. SB 100 requires associations to <u>disclose</u> this information, not to <u>distribute</u> it.

5) What is the difference between an association's name and the name of its common interest community that must be annually disclosed by written notice?

Often, an association's name and the name of its common interest community will be the same. Sometimes, however, the name of the community, which is not an association's legal name, will differ from the name of the association, which is its legal name found on the association's articles of incorporation.

6) What happens if a document that must be disclosed, like the results of any financial review or audit, is not ready within 90 days of the end of an association's fiscal year?

An association cannot disclose documents that it does not have yet. The association should inform all its members through its chosen means of disclosure that the document in question is not ready for disclosure yet and why. (e.g. the CPA does not have the audit results yet or the minutes from the last board meeting have not been ratified yet). Disclose the missing document as soon as it is received. (Of course, an association should be aware of the 90 day time frame and exercise reasonable efforts to ensure that the required documents are ready within that time frame).

7) The statute requires associations to disclose annually the "results" of an audit or review. What does this mean?

SB 100 does not define what it means by "results." The best practice, and our recommendation, is to disclose the entire document as there is no reason that owners should not know this information. Disclosing the entire document allows for transparency, which was the legislature's intent.

Sale of Unit – Seller's Disclosure to Buyer

1) What must a seller of a unit disclose to the buyer?

The seller of a unit in a common interest community must mail or personally deliver to the buyer, at the seller's expense, copies of the most current version of the following documents: 1) the association's bylaws and rules; 2) the association's declaration; 3) the association's covenants; 4) any party wall agreements; 5) minutes of the most recent annual unit owners' meeting and of any board meetings held within the six months preceding the title deadline; 6) the association's operating budget; 7) the association's annual income and expenditures statement; and 8) the association's annual balance sheet.

2) What must an association do to assist the seller in fulfilling his or her disclosure requirements under SB 100?

An association must use its best efforts to accommodate a request by a seller for any documents that are within the association's control under section 38-33.3-317.

3) Is an association liable if the seller fails to follow these disclosure requirements?

An association only has the responsibility to use best efforts to accommodate a request by the seller.

3) What does it mean that an association must use "best efforts" to comply with a seller's request for documents?

The requirement for "best efforts" means that boards and managers must make a reasonable good faith effort to comply with the seller's request.

5) May an association charge for providing a seller with the requested documents?

Yes.

Sale of Unit – Seller's Disclosure of Buyer's Responsibilities to Association and Requirement for Architectural Approval

1) What must a seller do under this section?

In addition to providing the buyer with the documents listed in 38-33.3-223 (see above), a seller must provide the buyer with a disclosure statement in bold-faced type that substantially states that the buyer understands his or her responsibility as a member of the association and that architectural approval may be necessary for exterior modifications of his or her unit.

In addition, the seller has the responsibility to obtain from the buyer a signed acknowledgment of receipt of the information and disclosure statement and deliver it to the association.

2) What if the seller fails to comply with these requirements?

If the seller fails to provide such information and disclosure statement, the buyer has a claim for relief against the seller for all damages and court costs incurred by the buyer. The seller will not be liable for such failure if the buyer's damages resulted from the association's failure to provide the documents within its control to the seller or because the association failed to maintain records as required by section 38-33.3-317.

BOARD MEMBER AND OWNER EDUCATION

1) What are SB 100's requirement concerning owner education?

SB 100 requires an association at least once a year to offer some type of education to its owners.

2) How can an association comply with the owner education requirement?

The offered education must be on a topic related to homeowner association operations or the respective rights, responsibilities, and duties of owners and board members with an association's board determining the criteria for compliance. Some ways an association may comply include offering presentations at the annual owners meeting, inserting educational articles into the association newsletter, offering a class, having a new homeowner orientation program or posting information on its website.

3) Does an association have the responsibility to make owners attend the offered education?

No. An association must just offer the education and has no liability if owners choose not to attend or take advantage of the offerings.

RESTRICTIONS ON BYLAWS AND COVENANTS

Xeriscaping

1) What is xeriscaping and how can I get more information on it?

Trademarked by the Denver Water Board in 1981, xeriscaping is a type of environmentally friendly landscaping that conserves water by limiting lawn areas, irrigating efficiently, and using low water use plants. More information on xeriscaping can be found at the following organizations' websites: Denver Water [www.water.denver.co.gov], Xeriscape Colorado!, Inc. [www.xeriscape.org], and Plant*talk*, Colorado [http://www.ext.colostate.edu/ptlk/].

2) What does SB 100 say about restrictive covenants that prohibit or limit a homeowner's ability to xeriscape?

SB 100 declares that *any* restrictive covenant that prohibits or limits a homeowner's ability to xeriscape is unenforceable as against public policy, regardless of how long an association has had that covenant.

3) Does this mean that an association may not bring enforcement actions against homeowners who let their grass die?

No. Associations may still bring enforcement actions against owners who allow their grass to die *unless* water use restrictions are in effect. Once the water use restrictions are lifted, an association must give the owner a reasonable and practicable time to reseed and revive turf grass before being required to replace it with new sod. Owners do have the responsibility to water their grass as allowed by the water restrictions, and an association may try to take enforcement actions against owners who do not do so. However, showing that an owner is not watering as allowed or that this decision not to water at all is the cause of his or her dead grass will most likely prove to be impossible.

4) An owner in my association has covered half his lot with gravel and has allowed weeds to take over the rest of his property. He is ignoring the association's requests that he comply with its landscaping requirements and insists that he has the right to "xeriscape" like this. Is he right?

No. Owners still must comply with landscaping requirements such as keeping their property free of weeds, as long as such requirements do not mandate that owners' landscaping consist "primarily" of turf grass. (Although the statute does not define "primarily," in our opinion a reasonable interpretation of "primarily" is any requirement for turf grass to cover 51% or more of an owner's property).

Additionally, the statute defines xeriscape as "the application of the principles of landscape planning and design, soil analysis and improvement, appropriate plant selection, limitation of turf area, use of mulches, irrigation efficiency, and appropriate maintenance that results in water use efficiency and water-saving practices." Covering your property with gravel or installing fake turf grass does not fit within this definition.

5) May an association still require owners to have some amount of sod?

An association may not limit an owner's "ability" to xeriscape or require landscaping to consist primarily of turf grass. We believe that if an association requires less than 50% of turf grass and allows an owner to xeriscape the rest, it is in compliance with this section of the statute.

6) My municipality's local code places restrictions on xeriscaping that are much more stringent than that allowed in SB 100. Is the local code now unenforceable?

No. The xeriscape provision of SB 100 addresses *only* an association's restrictive covenants, leaving municipalities free to govern xeriscaping as they

see fit. Therefore, municipalities (not associations) retain the authority and responsibility to enforce its own restrictions or regulations concerning xeriscaping.

7) Does SB 100 invalidate developer site plans that were approved by our municipality?

No. SB 100 does not apply to these plans, which leaves them intact as approved by the municipality.

8) Does SB 100 apply to special districts?

Yes. When enforcing landscaping regulations, special districts must comply with the requirements set forth in SB 100.

American and military service flags

1) What rights to display the American flag does SB 100 give to owners in common interest communities?

SB 100 gives owners the right to display the American flag on their property, in their windows, or on their balconies [regardless of whether the balcony is owned by the association] if the display complies with the Federal Flag Code, 4 U.S.C. 4 to 10. (A copy of the applicable sections of the Federal Flag Code is available on the Orten & Hindman website at www.ortenhindman.com). An association may regulate the location and the size of flags and flagpoles, but may not absolutely ban the installation of flags and flagpoles altogether.

2) My neighbor has the American flag nailed up to a tree in their front yard. Does SB 100 give him the right to do this?

When displaying the American flag, SB 100 requires that owners follow the flag display requirements in Federal Flag Code. The Code specifies that the flag should not be fastened, displayed, used or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way. Nailing the flag to a tree most likely does not comply with this requirement.

However, when making decisions on whether or not a display of the American complies with the Federal Flag Code, an association must remember the legislative intent was to allow homeowners to display the flag. Therefore, barring any blatant disrespect, an association should allow an owner to display the American flag.

3) Does SB 100 address the right of unit owners to display flags other than the American flag such as the flags of other nations or P.O.W. flags?

SB 100 only addresses the right of owners to display the American flag and military service flags.

4) What does SB 100 say about the display of military service flags?

Associations must allow owners to display military service flags with a star denoting the service of the unit owner or a member of the unit owner's immediate family in the active or reserve military service during a time of war or armed conflict. Although associations may have reasonable regulations on the method used to display military service flags as well as their size, such regulations must allow for flags measuring at least nine inches by sixteen inches.

Political Signs

1) What rights to display political signs does SB 100 give to owners?

Associations may not prohibit the display of political signs on owners' property and in owners' windows 45 days before and 7 days after an election. Associations may regulate the size and number of political signs, but these regulations may not be more restrictive than the applicable local ordinance that addresses this issue. If there is no local ordinance, the association must allow at least one political sign per political office or ballot issue with the maximum dimensions of 36 x 48 inches.

2) I live in a condominium. My association will not allow me to hang political signs on my adjoining balcony, saying that it is a limited common element and I don't own it. Is my association allowed to prohibit me from doing this?

Yes. Although the section on displaying American flags specifically states that an association must allow owners to display the flag on their balconies, the section on political signs only specifies that owners must be allowed to display such signs on their property and in their window. Based on statutory construction, the legislature's choice not to include balconies in the political sign provision means that associations may prohibit the display of political signs on balconies that are not the property of the homeowner (i.e. balconies or other structures that are limited common elements.)

3) What if my municipality's ordinance allows for the display of signs for a shorter period of time? Can my association follow the time period for display set out in the more restrictive ordinance?

No. Associations must comply with the time period set out in SB 100 (45 days before and 7 days after an election) during which associations must allow the

display of political signs, despite the existence of a more restrictive municipal code. The municipality, not the association, has the authority and the responsibility to enforce its more restrictive time frame if it wishes to do so.

4) **I really supported SB 100, but when I put signs in my front yard that said, "SB 100 Is Spectacular," my association took them down. Doesn't SB 100 say that I can have these signs?**

   SB 100 regulates the display of *political signs*, which it defines as "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." Signs conveying general political or ideological beliefs, unless a ballot issue, [e.g. "No Wal-mart!" "Support Our Troops!"] are not meant to directly influence an election's outcome and do not fall within this definition, meaning that the display of such signs are not protected by SB 100.

Emergency Vehicles

1) **When does an association have to allow an owner to park an emergency vehicle within its community?**

An association may not prohibit the parking of an emergency motor vehicle in the community if the unit owner is required by his or her employer to have the vehicle at his or her residence during designated times AND 1) the vehicle weighs 10,000 lbs or less; 2) the owner is a member of a volunteer fire department or an emergency service provider; 3) the vehicle has an official emblem designating it as an emergency service vehicle; AND 4) parking the vehicle will not obstruct emergency access or interfere with the reasonable needs of the other residents to use the community's streets and driveways.

2) **If the above conditions are met, where must an association allow an emergency vehicle to park?**

The association must allow the owner to park the emergency vehicle in the owner's driveway, the association's streets or guest parking area.

3) **I need my emergency vehicle as a condition of my employment by an emergency service provider and meet all the conditions of SB 100. I would rather park my emergency vehicle on the street in front of my home, but my association states that I must park it in the guest parking area that is located around the block and behind the club house. May my association require me to park my emergency vehicle in such an inconvenient spot?**

SB 100 is not clear on whether an association must allow a unit owner who meets all the criteria to decide whether he or she will park the emergency vehicle in his or her driveway, on the association's streets, or a guest parking space. Since your association is allowing you to park within the community, there is not a clear violation of section 38-33.3-106.5(d). It was, however, the intent of SB 100 to prohibit associations from penalizing those who meet the statute's requirements by unduly restricting the parking of their emergency vehicles. Taking this intent into consideration, your association may be well advised to allow you to park in the more convenient location.

4) How big is a 10,000 lb vehicle?

A Hummer, a large SUV, weighs close to 10,000 lbs. The 10,000 lb or less limitation means that the largest vehicle the statute covers is most likely a large ambulance, leaving owners looking for another place to park their hook and ladder trucks.

5) My neighbor works for the local cable company and insists that he must have his cable truck when he is "on call" for cable emergencies. Does my association have to allow him to park his truck in his driveway?

No. The statute defines "emergency service provider" as a "primary provider of emergency fire fighting, law enforcement, ambulance, emergency medical, or other emergency services." Cable companies, utility companies, plumbers etc. do not fall within this definition and are not included in SB 100.

6) My association only has a few guest parking spaces, one of which is used several times a month – on the weekends – by a neighbor who parks her emergency service vehicle there. When the vehicle is parked in the spot, it is difficult for the rest of us to find parking for our guests. Is this use of the guest parking space an inference with the "reasonable needs" of the rest of the community?

The last criteria that a unit owner must meet before having a statutory right to park his or her emergency vehicle within the community is that the "parking of the vehicle can be accomplished without obstructing emergency assess or interfering with the reasonable needs of other unit owners to use *streets* and *driveways* within the common interest community." (emphasis added). Using rules of statutory construction, the fact that guest parking spaces were not specified along with streets and driveways dictates the conclusion that guest parking spaces are not included in the "reasonable needs" provision. Therefore, your association should continue to allow your neighbor to park the emergency service vehicle in its guest parking spaces.

Fire Mitigation

1) I worry about forest fires. Does SB 100 allow me to clear away the vegetation surrounding my home, regardless of what my association documents say about clearing vegetation?

SB 100 grants owners the right to clear away the vegetation surrounding their homes for fire mitigation purposes if such removal complies with a written defensible space plan that has been filed with the association.

2) My neighbors are happily tearing up hedges that border our properties, claiming that they are following a written defensible space plan that they drew up for their property. Must my association allow this?

No. The written defensible space plan must have been designed for the particular property by either the Colorado state forest service, an individual or company certified by the local government to create such plans, or the fire chief, fire marshal, or the property's fire protection district. An owner does not have a right – unless he or she is one of the approved entities – to create his or her own defensible space plan.

3) SB 100 states that the written defensible space plan must be created by one of three approved entities. Who gets to choose who draws up the plan – the association or the owner?

Although the statute does not specify who chooses who will create the plan, a reasonable interpretation is that the owner, who has the desire to clear the vegetation and has begun the process to do so, has the right to choose who will create the plan.

4) I want to replace my cedar shake shingles with asphalt. My association insists that if I want to replace the cedar shake, I must use tiles, which is cost-prohibitive to me. Does SB 100 allow me to replace the cedar shake with asphalt anyway?

Yes, if your association does not provide you with an option that costs less than what it would cost to re-shingle your roof with cedar shake. SB 100 states that associations may not prohibit homeowners from replacing flammable roofing materials with inflammable roofing materials. An association may specify reasonable standards for the color, appearance, and general type of nonflammable roofing materials to be used. An association's governing documents, however, may not require the use of nonflammable materials that would cost more than replacing the flammable materials for which they are being substituted.

MISCELLANEOUS

1) Are both pre and post-CCIOA common interest communities subject to the insurance provision in SB 100?

No. This provision is not part of CCIOA and has different applications to pre and post-CCIOA communities. CCIOA contains a provision stating that an association may adjust claims and also allows owners – to the extent that they are an insured in respect to liability arising out of their interest in the association's common elements or their association membership – to make claims against an association's insurance policy. CCIOA also has a provision stating that in the event of a conflicting state statute, the provisions in CCIOA will take precedence. Since post-CCIOA communities are subject to *all* of CCIOA, they are not bound by this new insurance law because the provisions in CCIOA take precedence over this conflicting new law. Pre-CCIOA communities, however, are *not* subject to these two provisions in CCIOA (the supremacy clause and the section all the association to file claims) unless they have elected to be included in all of CCIOA per 38-33.3-118, making this new insurance law applicable to them.

2) How will associations be able to keep insurance premiums from sky-rocketing?

An association should educate its owners about how the insurance industry works and that filing claims leads to higher rates, which in turn will cause assessments to rise. In addition, an association should have a firm policy in place concerning the allocation of insurance deductibles to the individual filing the claim. Owners who understand both of these things will hopefully not abuse their ability to file claims as if they were additional insureds under the association's policy. Lastly, an association should work closely with its agent to prevent insurance premiums from rapidly increasing.