

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 06-0337.01 Duane Gall

SENATE BILL 06-089

SENATE SPONSORSHIP

Hagedorn,

HOUSE SPONSORSHIP

Carroll M.,

Jim Burneson has inserted comments through out this copy. These comments are his based on his opinion.

Senate Committees	House Committees
Judiciary	

BILL FOR AN ACT

CONCERNING COMMON INTEREST COMMUNITIES.

SENATE 3rd Reading Unamend ed March 1, 2006

SENATE Amended 2nd Reading February 28, 2006

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Clarifies provisions of S.B. 05-100 regarding regulation of political signs in common interest community associations (associations). Allows an association to prohibit the parking of commercial vehicles other than police, fire, and paramedic vehicles on community property and to limit the parking of police, fire, and paramedic vehicles so as to preserve adequate guest parking.

Simplifies provisions allowing a court to award attorney fees and costs to the prevailing party in litigation, eliminating the requirement of a claim-by-claim analysis of which party prevailed. Requires an association to adopt a written policy for dealing with disputes between the association and unit owners, and to make the policy available to unit owners upon request.

Modifies the requirement imposed by S.B. 05-100 that a financial audit or review be completed within 90 days after the close of the association's fiscal year. In place of the requirement that the association's accounting records employ generally accepted accounting principles, requires that the records be kept on a cash or modified accrual basis and be accurate and complete. Replaces the current requirement for a biennial audit or review with an optional procedure whereby a review is only required if requested by 1/3 of the unit owners, and an audit is required only if requested by 1/3 of the unit owners and the association's budget exceeds \$250,000.

To the list of annual disclosures the association must make available to unit owners, adds a statement of the association's insurance and maintenance responsibilities. Requires recording of the declaration and any covenants in the county land records, if not already so recorded.

In provisions specifying notice by mail and publication to first mortgagees regarding proposed changes to a common interest community's governing declaration, clarifies that a preexisting process, under which amendments may be authorized by court order, is still available.

Allows supermajority provisions exceeding 67% for the amendment of covenants to continue to apply in communities where 67% or more of the votes are allocated to a single owner.

Clarifies provisions relating to notice of meetings and the opportunity for unit owners to offer their views on agenda items prior to action by the executive board. Modifies requirements for the taking of votes by secret ballot and the counting of ballots. Exempts associations whose board members are selected by delegates from secret-ballot requirements.

Replaces S.B. 05-100 provisions on board member conflicts of interest with provisions imported from the "Colorado Revised Nonprofit Corporation Act".

In provisions allowing a unit owner to file a claim against the association's

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

property insurance policy to the same extent as a named insured, places conditions on the exercise of that right by requiring the unit owner first to contact the association and to give the association a reasonable opportunity to respond and inspect the damage. Prohibits an insurer from considering a clarification-of-coverage inquiry by a unit owner when setting premiums to be charged to the association.

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

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

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

(20.5) "MIXED-USE DEVELOPMENT" MEANS A COMMON INTEREST COMMUNITY THAT CONTAINS TWO OR MORE OF THE FOLLOWING ELEMENTS: RESIDENTIAL, COMMERCIAL, BUSINESS, RETAIL, OFFICE, AGRICULTURAL, RECREATIONAL, OR INDUSTRIAL.

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

2. **SECTION 38-33.3-106.5 (1)(c), (1)(d)(II), and (1)(d)(IV), Colorado Revised Statutes, are amended to read:**

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:

(c) (I) The display of a political sign by a unit owner on that unit owner's property or in a window of the unit owner's residence; except that:

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

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

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

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

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

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

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

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

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

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

This is the first suggested change that needs to be removed from this Bill.

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

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

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

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

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

(e) 38-33.3-223;

*There are many HOAs that were formed before July 1999. These HOAs can vote to join the CCIOA, which will bring in the changes of SB 100 and also whatever is left of this SB 06-89. It is totally improper to pass new rules and laws that effect HOAs who consider themselves **(EXCEMPT FROM)** of the rules of CCIOA. They can vote to come under the rules of CCIOA and that's fine, but don't pass laws they are not aware of that will cover their HOA, because this bill was not advertised as effecting HOAs who to date, are not covered by the CCIOA.*

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

Please read the following changes to this paragraph and ask yourself why the CAI lined-out the words that they did. None of these changes are needed, and in fact, remove the collection of legal fees by a Homeowner if he is part of a counterclaim, cross-claim and third party. If the CAI lawyer knows legal fees will not be collected if he loses on these claims, it's a free ride in a lawsuit, even if he loses to a Homeowner. Remove all lined-out words to its original reading, do not let this change go through.

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

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

38-33.3-124. Legislative declaration - alternative dispute resolution encouraged - policy statement required. (1) (a) The general assembly finds and declares that the cost, complexity, and delay inherent in court proceedings make litigation a particularly inefficient means of resolving neighborhood disputes.

Therefore, common interest communities are encouraged to adopt protocols that make use of mediation or arbitration as alternatives to, or preconditions upon, the filing of a complaint between a unit owner and association in situations that do not involve an imminent threat to the peace, health, or safety of the community.

A mandate to adopt a policy to set a procedure for addressing disputes arising between the association and unit owners is not solved by this requirement.

Addressing disputes with a written policy doesn't require all disputes to be submitted to a form of arbitration or mediation. Our experience with arbitration has been out of 6 required by the court, all 6 failed for lack of final approval by the board, which was after all parties agreed to sign a settlement agreement from arbitration and mediation. Each time the board refused to ratify the written settlement, it cost the membership another year in lost time before getting a court date.

Another purpose for this effort of mediation is to get the members and directors to mediate with a city official, like City of Aurora. In this case the mediator chosen is not a trained mediator and is easily influenced by the board's attorney who will run the entire mediation to his satisfaction. There is no balance for a level playing field in this mediation. The HOA member will lose every time, not to the justice of the hearing, but to power of a law license over a citizen.

(b) 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.

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

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

Here again read the words lined-out and understand the purpose of this effort to erase the intent to require “any financial audit or review for the fiscal year immediately preceding the current annual disclosure.” With the lined-out words, the property manager, board or lawyer can submit any audit report two years old, and it will be OK. THIS DOES NOT HELP PROTECT THE HOA MEMBERS. IT HELPS THE CAI ATTORNEYS.

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

(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 AND SHALL BE ACCOMPANIED BY A DISCLOSURE STATEMENT IN BOLD-FACED TYPE THAT IS CLEARLY LEGIBLE AND IN SUBSTANTIALLY THE FOLLOWING FORM:

"THE ASSOCIATION MAY OBTAIN PROPERTY INSURANCE COVERING CERTAIN PORTIONS OF THE COMMON INTEREST COMMUNITY. ANY PROPERTY INSURANCE MAINTAINED BY THE ASSOCIATION MAY NOT COVER YOUR UNIT (OR PORTIONS OF YOUR UNIT) AND MAY NOT COVER THE PERSONAL BELONGINGS AND OTHER CONTENTS OF YOUR UNIT. YOU SHOULD NOT ASSUME THAT ANY PROPERTY INSURANCE MAINTAINED BY THE ASSOCIATION WILL PROTECT YOU AGAINST DAMAGE TO OR LOSS OF YOUR UNIT AND ITS CONTENTS. YOU SHOULD DETERMINE WHAT INSURANCE COVERAGE MAY BE REQUIRED TO PROTECT YOU AGAINST DAMAGE TO OR LOSS OF YOUR UNIT AND ITS CONTENTS. YOU SHOULD OBTAIN PROFESSIONAL ADVICE REGARDING INSURANCE COVERAGE OF YOUR UNIT AND ITS CONTENTS."

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

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

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

(b) Adopt policies, procedures, and rules and regulations concerning: *This doesn't say what the policies, procedures and rules will be. This becomes the playground of the CAI attorney who tells the board that what he is writing has been*

approved by SB 100 and is required by all HOAs. Mr. Rich Johnston's CAI attorney's first procedure for the Dam East HOA was that his legal fees must be paid first, and if there is ANY MONEY LEFT OVER, IT WILL GO TO PAY THE DELINQUENT FEES OF THE MEMBER. Which is a perfect collection agency for a lawyer.

ATTACHED TO THIS REVIEW IS A COPY OF Mr. Rich Johnston's process and procedures which this paragraph (b) started.

(VI) Investment of reserve funds; and

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

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

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

38-33.3-217. Amendment of declaration. ~~(1) (a) (I) Except in cases of amendments that may be executed by a declarant under section 38-33.3-205 (4) and (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210, or 38-33.3-222, by an association under section 38-33.3-107, 38-33.3-206 (4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213, or 38-33.3-218 (11) and (12), or by the district court for any county that includes all or any portion of a common interest community under subsection (7) of this section, and except as limited by subsection (4) of this section.~~ *Any time it is suggested that a group of existing sections this large be lined-out, a detailed explanation must be given to justify the rational for the removal the existing laws on the books. This is a great way to remove laws without explaining why and what the result will be once removed.*

AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) 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. *The preceding capitalized paragraph should not be included in this bill. A change of the voting ratios must be handled by the membership, not a court of law. Absent this paragraph a group of an HOA still can petition the court to hear a request to reduce a voting percentage. This paragraph is intended to intimidate the membership from stopping an effort to go to court and deny a change for their own good reasons. THIS CHANGE DOES NOT HELP THE HOA MEMBERSHIP. IT HELPS THE CAI LAWYER WHO WANTS TO RUN THE HOA FOR HIS OWN PURPOSE.*

The following changes must be clearly explained in detail each section listed, what it means and what and how the changes will affect the public. There are no committee members who can determine the effect of this change without an independent lawyers review to protect the public from changes written by the lobbyist CAI Lawyers.

(II) 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 MIXED-USE DEVELOPMENTS, PHASED COMMUNITIES, OR DECLARANT-CONTROLLED COMMUNITIES.

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

(A) Send a dated, written notice and a copy of any proposed amendment by

certified mail to each first mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof; AND

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

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

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

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

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

HERE IS A SECTION THAT IS REPEALED. LETS LOOK AT THIS "REPEALED SECTION" AND FIND OUT WHAT IS LOST.

38-33.3-223. Sale of unit - disclosure to buyer.

1.

Statute text

(1) Except in the case of a foreclosure sale, the seller of a unit in a common interest

community shall mail or deliver to the purchaser, on or before the title deadline, copies of all of the following in the most current form available:

- (a) The bylaws and the rules of the association;
 - (b) The declaration;
 - (c) The covenants;
 - (d) Any party wall agreements;
 - (e) Minutes of the most recent annual unit owners' meeting and of any executive board meetings that occurred within the six months immediately preceding the title deadline;
 - (f) The association's operating budget;
 - (g) The association's annual income and expenditures statement; and
 - (h) The association's annual balance sheet.
- (2) The association shall use its best efforts to accommodate a request by the seller for documents that are within the association's control, in accordance with section 38-33.3-317.
- (3) Written notice of any unsatisfactory provision in any of the documents listed in subsection (1) of this section, which notice is signed by the buyer or on behalf of the buyer and given to the seller on or before the governing documents objection deadline, shall be cause for termination of the contract of purchase and sale of the unit. If the seller does not receive such written notice of objection on or before the governing documents objection deadline, the buyer shall be deemed to have accepted the terms of said documents, and the buyer's right to terminate the contract on this basis is waived.
- (4) The time periods specified in this section may be altered by mutual agreement of the parties.
- (5) Notwithstanding section 38-33.3-117 (1) (h.7), 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).

HOW ABOUT THAT... LOOK AT WHAT IS GOING TO BE WITHHELD FROM A BUYER BY THE CAI ATTORNEY. IS THE REMOVAL OF THIS SECTION HELPFUL TO THE HOMEOWNERS, AND MOST IMPORTANT THE BUYERS? IT IS HELPFUL TO THE BOARD, PROPERTY MANAGERS, AND YES THE LAWYERS. KEEP THOSE BUYERS IGNORANT OF THEIR RIGHTS AND NEW PROFITS CAN BE MADE BY ALL. . THIS ENTIRE SECTION MUST NOT BE REPEALED AND IT SHOULD BE MADE THE RESPONSIBILITY OF THE BOARD THAT ALL BUYERS RECEIVE COPIES OF ALL

LISTED DOCUMENTS PLUS, PENDING OR IN PROGRESS LAWSUITS AGAINST MEMBERS OR THE ASSOCIATION.

Annotations

Editor's note: This section is effective January 1, 2006.

SECTION

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

SECTION

3. 38-33.3-303 (2), Colorado Revised Statutes, is amended **BY THE ADDITION OF A NEW PARAGRAPH** to read:

The following is miss-titled on purpose. This section tried to remove the liability for financial results (failure) by the Board of Directors. Now no one is responsible for the HOAs funds invested in a bank at 3 % interest. The board by the terms of this section can lose all the money and be protected by the business judgment rule.

Without this section, the board of directors of an HOA has absolutely no liability for their actions. (Private business can't be run this way) The courts of Colorado will not hold a volunteer director liable for any misconduct as a director, except for murder. CAI lawyers know this and tell the directors you can get away everything except murder.

38-33.3-303. Executive board members and officers - powers and duties - audit. (2) (c) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, THE OFFICERS AND MEMBERS OF THE EXECUTIVE BOARD SHALL NOT BE LIABLE FOR THE FINANCIAL RESULTS OF ANY INVESTMENT OF RESERVE FUNDS IF THE CONDUCT OF SUCH OFFICERS AND MEMBERS IN MAKING SUCH INVESTMENT WAS PERMISSIBLE UNDER THE PRINCIPLE OF LAW GENERALLY KNOWN AS THE BUSINESS JUDGMENT RULE.

SECTION

4. 38-33.3-303 (4) (b), Colorado Revised Statutes, is amended to read:

38-33.3-303. Executive board members and officers - powers and duties - audit. (4) (b) (I) AT THE DISCRETION OF THE EXECUTIVE BOARD OR UPON REQUEST PURSUANT TO SUBPARAGRAPH (II) OR (III) OF THIS PARAGRAPH (b) AS APPLICABLE, the books and records of the association shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on

standards for accounting and review services, ~~at least once every two years~~ by ~~a~~ AN INDEPENDENT person selected by the ~~executive~~ board. *With this description of an independent person he could be the janitor from next door.* Such person need not be a certified public accountant except in the case of an audit. *OK if he is not an accountant how does he prepare the following review?* THE AUDIT OR REVIEW REPORT SHALL COVER THE ASSOCIATION'S FINANCIAL STATEMENTS, WHICH SHALL BE PREPARED USING GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ON THE ACCRUAL BASIS OF ACCOUNTING OR USING ANOTHER COMPREHENSIVE 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. *This is real tricky since most HOAs have less than 10 percent of the membership that will participate in any actions of their association. So The CAI has set up an impossible requirement that will stop all future audits of any HOA and the lawyers and property managers can and will feed on the membership like a money tree.*

(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. *One-third vote will never happen.*

~~(III)~~ (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. ***ALL AUDITS MUST BE COMPLETED FOR***

PRESENTATION TO THE MEMBERSHIP AT EVERY ANNUAL MEETING.

WITHIN THE AUDIT THE REPORT OR CPA MUST STATE THAT ALL MONEYS EXPENDED WAS APPROVED BY A MOTION AND VOTE OF THE BOARD OF DIRECTORS AT A DULY HELD MEETING.

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

SECTION

5. 38-33.3-308 (1), (2.5) (a), and (2.5) (b), Colorado Revised Statutes, are amended to read:

38-33.3-308. Meetings. (1) Meetings of the unit owners, as the members of the association, shall be held at least once each year. Special meetings of the unit owners may be called by the president, by a majority of the executive board, or by unit owners having twenty percent, or any lower percentage specified in the bylaws,

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

(2.5) (a) Notwithstanding any provision in the declaration, bylaws, or other documents to the contrary, all meetings of the association and board of directors are open to every unit owner of the association, or to any person designated by a unit owner in writing as the unit owner's representative. ~~and all unit owners or designated representatives so desiring shall be permitted to attend, listen, and speak at an appropriate time during the deliberations and proceedings; except that, for regular and special meetings of the board, unit owners who are not board members may not participate in any deliberation or discussion unless expressly so authorized by a vote of the majority of a quorum of the board.~~ *Here again remove the line-outs above and let this part of SB 100 remain in force. An addition is needed here. All members and representatives must be allowed to express their opinion (freedom of speech) on issues that the board will be voting on at this meeting.*

(b) AT AN APPROPRIATE TIME DETERMINED BY THE BOARD, BUT BEFORE THE BOARD VOTES ON AN ISSUE UNDER DISCUSSION, UNIT OWNERS OR THEIR DESIGNATED REPRESENTATIVES SHALL BE PERMITTED TO SPEAK REGARDING THAT ISSUE. The board may place reasonable time restrictions on those persons speaking during the meeting. ~~but shall permit a unit owner or a unit owner's designated representative to speak before the board takes formal action on an item under discussion, in addition to any other opportunities to speak.~~ *Remove the line-outs and let this right of a member continue in SB 100. CAI wants to control all meeting and prevent a homeowner from criticizing the board. The CAI removed the above line-outs and didn't replace it with any homeowner rights.*

IF MORE THAN ONE PERSON DESIRES TO ADDRESS AN ISSUE AND THERE ARE OPPOSING VIEWS, the board shall provide for a reasonable number of persons to speak on each side of ~~an~~ THE issue.

SECTION

6. 38-33.3-310 (1) (b) (I), Colorado Revised Statutes, is amended, and the said 38-33.3-310 (1) (b) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

ROBERTS RULES OF ORDER RUNS MOST OF THE HOA MEETINGS. LAWYERS DON'T LIKE THIS BOOK OF RULES SINCE IT WAS NOT INCLUDED IN LAW SCHOOL. SO THEY ARE ALWAYS TRYING TO WRITE THEIR OWN VERSION OF RULES TO RUN A MEETING, NOT FOR THE MEMBERSHIP'S RIGHTS, BUT TO GIVE TOTAL CONTROL TO THE BOARD TO SURPRESS A TOTAL REMOVAL OF THE BOARD. (Hostile takeover by members)

38-33.3-310. Voting - proxies. (1) (b) (I) Votes for CONTESTED positions on the executive board shall be taken by secret ballot. ~~and~~ **AT THE DISCRETION OF THE BOARD OR (HAS TO BE REMOVED).** upon the request of ~~one or more~~ TWENTY PERCENT OF THE unit owners WHO ARE PRESENT AT THE MEETING OR REPRESENTED BY PROXY, IF A QUORUM HAS BEEN ACHIEVED, **(MUST BE REMOVED) ROBERTS RULES OF ORDER SAY ONE OR MORE UNITS OWNERS, NOT 20 PERCENT.**

a vote on any other matter affecting the common interest community on which all unit owners are entitled to vote shall be by secret ballot. Ballots shall be counted by a ~~neutral third party or by a unit owner who is not a candidate, who attends the meeting at which the vote is held, and who is selected at random from a pool of two or more such unit owners~~ COMMITTEE OF UNIT OWNERS WHO ARE NOT CANDIDATES AND NOT BOARD MEMBERS. THE COMMITTEE SHALL CONSIST OF VOLUNTEERS 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 results of ~~the~~ A vote TAKEN BY SECRET BALLOT shall be reported without reference to names, addresses, or other identifying information.

(III) THIS PARAGRAPH (b) 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.

SECTION

7. 38-33.3-310.5, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read: *This repeal effort is a farce. This existing section protects the membership from any director having a conflict interest in the operation of the HOA.*

This entire amendment is a "weasel clause" to allow all the conflicts of interests committed by directors, so long as the board approves the conflict. This is a way to approve a conflict after it is discovery

This committee must reject this amendment in its entirety.

38-33.3-310.5. Executive board - definitions - conflicting interest transactions.

(1) AS USED IN THIS SECTION:

(a) "CONFLICTING INTEREST TRANSACTION" MEANS A CONTRACT, TRANSACTION, OR OTHER FINANCIAL RELATIONSHIP BETWEEN THE ASSOCIATION AND A DIRECTOR, OR BETWEEN THE ASSOCIATION AND A PARTY RELATED TO A DIRECTOR, OR BETWEEN THE ASSOCIATION AND AN ENTITY IN WHICH A DIRECTOR OF THE ASSOCIATION IS A DIRECTOR OR OFFICER OR HAS A FINANCIAL INTEREST.

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

(c) "PARTY RELATED TO A DIRECTOR" SHALL MEAN A SPOUSE, A DESCENDANT, AN ANCESTOR, A SIBLING, THE SPOUSE OR DESCENDANT OF A SIBLING, AN ESTATE OR TRUST IN WHICH THE DIRECTOR OR A PARTY RELATED TO A DIRECTOR HAS A BENEFICIAL INTEREST, OR AN ENTITY IN WHICH A PARTY RELATED TO A DIRECTOR IS A DIRECTOR OR OFFICER OR HAS A FINANCIAL INTEREST.

(2) NO LOANS SHALL BE MADE BY THE ASSOCIATION TO ITS DIRECTORS OR OFFICERS. ANY DIRECTOR OR OFFICER WHO ASSENTS TO OR PARTICIPATES IN THE MAKING OF ANY SUCH LOAN SHALL BE LIABLE TO THE ASSOCIATION FOR THE AMOUNT OF THE LOAN UNTIL THE LOAN IS REPAYED.

(3) NO CONFLICTING INTEREST TRANSACTION SHALL BE VOID OR VOIDABLE OR BE ENJOINED, SET ASIDE, OR GIVE RISE TO AN AWARD OF DAMAGES OR OTHER SANCTIONS IN A PROCEEDING BY A UNIT OWNER OR BY OR IN THE RIGHT OF THE ASSOCIATION SOLELY BECAUSE THE CONFLICTING INTEREST TRANSACTION INVOLVES A DIRECTOR, A PARTY RELATED TO A DIRECTOR, OR AN ENTITY IN WHICH A DIRECTOR OF THE ASSOCIATION IS A DIRECTOR OR OFFICER OR HAS A FINANCIAL INTEREST; SOLELY BECAUSE THE DIRECTOR IS PRESENT AT OR PARTICIPATES IN THE MEETING OF THE EXECUTIVE BOARD OR OF THE COMMITTEE OF THE BOARD THAT AUTHORIZES, APPROVES, OR RATIFIES THE CONFLICTING INTEREST TRANSACTION; OR SOLELY BECAUSE THE DIRECTOR'S VOTE IS COUNTED FOR SUCH PURPOSE, IF:

(a) THE MATERIAL FACTS AS TO THE DIRECTOR'S RELATIONSHIP OR INTEREST AND AS TO THE CONFLICTING INTEREST TRANSACTION ARE DISCLOSED OR ARE KNOWN TO THE EXECUTIVE BOARD OR THE COMMITTEE, AND THE EXECUTIVE BOARD OR COMMITTEE IN GOOD FAITH AUTHORIZES, APPROVES, OR RATIFIES THE CONFLICTING INTEREST TRANSACTION BY THE AFFIRMATIVE VOTE OF A MAJORITY OF THE DISINTERESTED DIRECTORS, EVEN THOUGH THE DISINTERESTED DIRECTORS ARE LESS THAN A QUORUM;

(b) THE MATERIAL FACTS AS TO THE DIRECTOR'S RELATIONSHIP OR INTEREST AND AS TO THE CONFLICTING INTEREST TRANSACTION ARE DISCLOSED OR ARE KNOWN TO THE UNIT OWNERS ENTITLED TO VOTE ON THE ISSUE, AND THE CONFLICTING INTEREST TRANSACTION IS SPECIFICALLY AUTHORIZED, APPROVED, OR

RATIFIED IN GOOD FAITH BY A VOTE OF THE UNIT OWNERS ENTITLED TO VOTE ON THE ISSUE; OR

(c) THE CONFLICTING INTEREST TRANSACTION IS FAIR AS TO THE ASSOCIATION.

(4) COMMON OR INTERESTED DIRECTORS MAY BE COUNTED IN DETERMINING THE PRESENCE OF A QUORUM AT A MEETING OF THE EXECUTIVE BOARD OR OF A COMMITTEE THAT AUTHORIZES, APPROVES, OR RATIFIES THE CONFLICTING INTEREST TRANSACTION.

SECTION

8. 38-35.7-102, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

When a section is to be deleted and amended it should be shown in it's entirety for the committee to read what is being asked to be erased from the law. So I have copied the entire sections 38-35.7 -102 for you to read.

38-35.7-102. Disclosure - common interest community - requirement for architectural approval.

Statute text

(1) In every purchase and sale of residential real property in a common interest community:

(a) The seller shall cause to be furnished to the buyer, at the seller's expense, all documents required by section 38-33.3-223 at least ten days before closing in the case of a sale by owner or within the time limits set forth in section 38-33.3-223 in the case of a brokered transaction.

(b) (I) The seller shall provide the buyer with a disclosure statement in bold-faced type that is clearly legible and in substantially the following form:

"THE BUYER HEREBY ACKNOWLEDGES THAT THE BUYER HAS RECEIVED COPIES OF THE DECLARATION, COVENANTS, BYLAWS, AND RULES AND REGULATIONS OF THE HOMEOWNERS' ASSOCIATION OF THE [NAME OF COMMON INTEREST COMMUNITY], IN WHICH THE PROPERTY IS LOCATED, AND THE BUYER UNDERSTANDS THAT THESE DOCUMENTS CONSTITUTE AN AGREEMENT BETWEEN THE ASSOCIATION AND THE BUYER. BY SIGNING THIS STATEMENT, THE BUYER ACKNOWLEDGES THAT THE BUYER HAS READ AND UNDERSTANDS THE ASSOCIATION'S DECLARATION, COVENANTS, BYLAWS, AND RULES AND REGULATIONS. THE BUYER ALSO UNDERSTANDS THAT BY COMPLETING THIS PURCHASE, THE BUYER IS

RESPONSIBLE FOR PAYING ASSESSMENTS TO THE ASSOCIATION. IF THE BUYER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO COLLECT THE DEBT.

THE BUYER ALSO UNDERSTANDS THAT ANY CHANGE TO THE EXTERIOR OF THE PROPERTY MAY BE SUBJECT TO ARCHITECTURAL REVIEW AND APPROVAL. FAILURE TO SECURE SUCH REVIEW AND APPROVAL COULD BE A VIOLATION OF THE DECLARATION AND COULD RESULT IN REMEDIAL ACTION BEING TAKEN BY THE ASSOCIATION."

(II) It shall be the responsibility of the seller to obtain from the purchaser a signed acknowledgment of receipt of the information and disclosure statement described in this section, whether such acknowledgment is incorporated in the contract of purchase and sale or otherwise, at the time of closing and to deliver such signed acknowledgment to the association as soon as is practicable thereafter. In the event of the failure by the seller to provide such information and disclosure statement, the purchaser shall have a claim for relief against the seller for all damages to the purchaser resulting from such failure plus court costs; except that, to the extent that the buyer's damages resulted from the association's failure or refusal, without legal justification, to provide documents within its control to the seller despite the good faith efforts of the seller to obtain them, or because the association did not maintain records as required by section 38-33.3-317, the seller shall not be liable.

(2) This section shall not apply to the sale of a unit that is a time-share unit, as defined in section 38-33-110 (7).

Annotations

Editor's note: This section is effective January 1, 2006.

What is wrong with the above section that it has to be deleted? There is nothing wrong except for the responsibility of passing on to the buyer documents claiming that the seller is the only one responsible. Here the board, property manager and CAI lawyer shirk the responsibility of getting the right documents to a buyer who might be around for 20 years.

The amendment that is to replace this one above is worse. It issues in bold type, a threat to the buyer of what is going to happen if you step over the line one inch and then we will sic our lawyers on you and you can lose your home through foreclosure, which we know how to win. This shows the arrogance of the CAI and the sponsors of this bill. We don't care how ugly our demands are and we don't care if we kill property sales, you will never cross us once you are dumb enough to move into this covenant controlled subdivision.

38-35.7-102. Disclosure - common interest community - obligation to pay assessments - requirement for architectural approval. (1) EVERY CONTRACT FOR THE PURCHASE AND SALE OF RESIDENTIAL REAL PROPERTY IN A

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

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

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

(b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (2), CONTRACTS FOR THE PURCHASE AND SALE OF RESIDENTIAL REAL PROPERTY PREPARED BY A LICENSED REAL ESTATE BROKER SHALL NOT BE REQUIRED TO

CONTAIN THE DISCLOSURE SET FORTH IN SUBSECTION (1) OF THIS SECTION UNTIL THE REAL ESTATE COMMISSION HAS PROMULGATED A FORM OF PURCHASE AND SALE CONTRACT, OR ADDENDUM THERETO, THAT CONTAINS SUCH DISCLOSURE, AND, UNTIL SUCH FORM HAS BEEN PROMULGATED, SELLERS REPRESENTED BY A LICENSED REAL ESTATE BROKER SHALL NOT BE LIABLE FOR FAILING TO PROVIDE SUCH DISCLOSURE.

None of the above paragraphs mean anything. The buyer will have to hire an attorney for \$20,000 to enforce this section and that's if he can find the seller.
ENFORCEMENT OF THIS SB 06-89, SB 100, AND THE CCIOA IS TOTALLY AT THE COST OF A HOMEOWNER.

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

SECTION

1. 10-4-110.8 (5), Colorado Revised Statutes, is amended to read:

10-4-110.8. Homeowner's insurance - prohibited practices - definitions.

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

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

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

(III) THE SUBJECT MATTER OF THE CLAIM FALLS WITHIN THE ASSOCIATION'S INSURANCE RESPONSIBILITIES AS DEFINED BY THE DECLARATION OR IN AN INSURANCE POLICY LISTED PURSUANT TO SECTION 38-33.3-209.4 (2) ~~(f)~~, C.R.S.

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

SECTION

2. **Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.