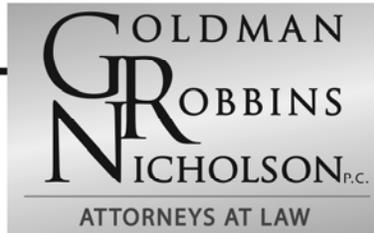

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May 30, 2007

Jim Clay, President
Pine River Ranches Landowners Association
P.O. Box 602
Bayfield, CO 81122

**Re: Compliance with Recent Changes to Colorado Common Interest Ownership Act (SB 89 & SB 100)
Our File No. 1989.001**

Dear Mr. Clay:

Again, thank you for asking our firm to assist the Pine River Ranches Landowners Association, Inc. (the "Association") with its efforts to come into compliance with the recent changes to the Colorado Common Interest Ownership Act, §§ 38-33.3-101 *et seq.* ("CCIOA"). Among other things, these recent changes to CCIOA require all owners' associations for common interest communities (such as Pine River Ranches Subdivision No. 2 ("PRR")) to adopt policies and procedures with respect to the ways in which the associations conduct certain aspects of their business. We have reviewed the Association's governing documents provided to us by Pat LeRoy, Secretary-Treasurer, and have made the conclusions set forth below regarding the steps that the Association should take to come into compliance with CCIOA.

In forming the opinions expressed in this letter, we have reviewed the following Association documents:

1. the Articles of Incorporation of the Association, filed with the Colorado Secretary of State in 1980;
2. undated Bylaws of the Association, which were recorded in the office of the La Plata County Clerk & Recorder in 1991;
3. other Bylaws of the Association, which recite that they incorporate revisions through July 2000;
4. the original Plat of the Pine River Ranches Subdivision No. 2, recorded by New Age Corporation in 1971; and
5. a copy of the "Third Amended Covenants, Conditions, and Restrictions of Pine River Ranches Subdivision No. 2 as recorded with La Plata County Clerk, Colorado RCPT#620886 on 12/27/91".

We also received, but only briefly reviewed, copies of the minutes of all annual owners meetings from 1981 to 2006.

Jim Clay, President
Pine River Ranches Landowners Association
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CCIOA. As a starting point, I wanted to provide some background information on CCIOA. CCIOA was adopted and made effective on July 1, 1992. Upon adoption, it applied primarily to only those “common interest communities” created on or after July 1, 1992. A “common interest community” is defined as “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”. When originally adopted, only a handful of CCIOA’s provisions applied to “preexisting communities,” which are defined as those created prior to July 1, 1992. However, with the adoption of Senate Bills 89 and 100 in 2005 and 2006 respectively (as discussed below), many more of CCIOA’s provisions are now applicable to and binding on preexisting communities.

SB 89 & SB 100. On June 26, 2005, Senate Bill 100 went into effect, which made many changes to CCIOA, including making many more of its provisions applicable to preexisting communities like PRR. Most notably, SB 100 renders unenforceable any community covenant that purports to prohibit: xeriscaping; display of American flags, military service flags, or political signs; parking of emergency vehicles within the community; or removal of trees to create wildfire defensible space. SB 100 also requires all associations to have certain written policies and procedures regarding: (1) collection of unpaid assessments; (2) conflicts of interest; (3) conduct of meetings; (4) enforcement of covenants; (5) inspection of records; (6) investments of reserve funds; and (7) adoption and amendment of policies. Senate Bill 89, adopted on May 26, 2006, clarified some things in the earlier bill and also added another policy to the list of required association policies: (8) dispute resolution between owners and associations. I am enclosing for your reference a document that sets forth all of the provisions of CCIOA that are currently applicable to preexisting communities such as PRR¹.

No Required Changes to Covenants.² I have reviewed the Third Amended Covenants, Conditions, and Restrictions of Pine River Ranches Subdivision No. 2 as recorded with La Plata County Clerk, Colorado RCPT#620886 on 12/27/91 (the “Covenants”), and it is my opinion that the recent amendments to CCIOA do not *require* any amendments to the Covenants and that no provisions of the Covenants are rendered unenforceable by the recent amendments to CCIOA.

Suggested Changes to Covenants. Notwithstanding the foregoing, there are a number of amendments to the Covenants that I might suggest, as set forth below.

The existing Covenants provide that the Covenants can be amended by an affirmative vote of a majority of the lot owners. Please note that this does not mean a majority vote of owners at a meeting at which there is a quorum; instead, there must be an affirmative vote of a majority of

¹ As you may already be aware, there is a procedure under CCIOA by which a preexisting community may elect to be governed by *all* of CCIOA’s provisions. (See § 38-33.3-118 of the enclosed CCIOA excerpts). If you would like more information on this, please let me know.

² I am not expressing any opinion on whether the Covenants were properly amended and/or whether they are valid and binding on all land owners in PRR. If you would like me to render an opinion on this, please let me know.

all lot owners in order for an amendment to the Covenants to be legally adopted³. Also, although the Covenants do not require that all amendments to the Covenants be recorded in the La Plata County Clerk and Recorder's office, it is very important that all amendments be so recorded so that they will be binding and enforceable on all purchasers of lots in the subdivision. From a brief review of the meeting minutes, it appears that there have been various discussions in the past regarding amendments to particular covenants and that there was an attempt at one point to record a fourth amended set of covenants. However, it is my understanding that no further amendments to the covenants have been formally executed by the Association and that no further amendments have been recorded in the La Plata County Clerk and Recorder's office. Accordingly, previous attempts at amending the Covenants may not be legally valid.

For the foregoing reasons, I would recommend that a Fourth Amendment to the Covenants (or a full restatement and replacement of the Covenants) be formally addressed and adopted by a majority of all lot owners and that the amendment document then be recorded in the La Plata County real property records. In addition to setting forth the amendments that have been discussed/adopted at meetings to-date, if desired, I would recommend the inclusion of the following amendments:

(a) Covenant #13 could be amended to clarify that natural trees and vegetation can be removed by an owner in order to create defensible space so long as the removal is in accordance with a sanctioned written defensible space plan. (See § 38-33.3-106.5(1)(e)).

(b) If architectural/design review is important to the membership, I would suggest amending Covenant #19 to refer to separate architectural design guidelines that will be adopted by the Board and applied to all new construction proposals by the Design Committee. Such guidelines could elaborate upon Covenant #20's reference to the desire for exteriors to conform to the "rustic wilderness setting," which is quite vague. From my experience, it is preferable to have separate design guidelines rather than detailed requirements in the covenants because guidelines can be amended more easily than covenants.

(c) In various places, I would suggest including a reference to separate rules and regulations and/or policies that will be adopted by the Association and amended from time to time to elaborate upon matters referenced in the Covenants – for example, enforcement of covenant violations.

(d) I would suggest amending Covenant #24 to elaborate upon the types of common expenses that can be paid for from the assessments (e.g., there is currently no reference to the cost of liability insurance, which I assume the Association has in place and pays for via the assessment revenue). Also, the last paragraph of Covenant #24 regarding liens for unpaid assessments could be amended because it currently provides that the assessment lien is subordinate to the liens of mortgagees (thereby making collection actions difficult), whereas

³ Accordingly, whether any amendments to the Covenants are valid depends upon whether they received such a majority approval. I have not conducted a review of the meeting minutes to determine whether any prior attempts to amend the Covenants are valid. If you would like me to do so, please let me know.

Jim Clay, President
Pine River Ranches Landowners Association
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CCIOA provides that six months' worth of an assessment is senior to the lien of a mortgagee. Finally, the Bylaws contains a provision regarding special assessments (§ 3.9) that appears to conflict with Covenant #25; i.e., the bylaws allow for special assessments to be imposed by the Board, whereas Covenant #25 requires a majority vote of all owners.

(e) I would suggest that the Road Impact Fee contained in the Bylaws be included in the Covenants.

Necessary Policies. As stated above, pursuant to the recent amendments to CCIOA, policies and procedures pertaining to the following matters must be adopted by the Association:

- (1) Collection of unpaid assessments (e.g., what types of notices are given? Are late fees or interest charged? Etc.);
- (2) Handling of conflicts of interest involving board members (e.g., what criteria determine whether a conflict exists? how to board members disclose conflicts? Etc.);
- (3) Conduct of meetings (e.g., how are notices given? Any parliamentary procedures used? Secret ballots? Etc.);
- (4) Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines, if any;
- (5) Inspection and copying of association records by unit owners (are owners charged for copies? How much? Are any records considered confidential? Etc.);
- (6) Investment of reserve funds;
- (7) Procedures for the adoption and amendment of policies, procedures, and rules; and
- (8) Procedures for addressing disputes arising between the association and unit owners (e.g., type of resolution procedure to be used? How costs are to be allocated?).

I will be happy to draft sample policies and procedures for the Association's review and possible adoption. It would be helpful if we could first discuss the Association's current informal policies/procedures on these topics, if any.

Additional Obligations Imposed by CCIOA. Finally, in addition to the foregoing, the recent amendments to CCIOA also impose the following obligations on all associations:

- the obligation to compile and disclose to owners within 90 days of the end of each fiscal year various documents and information (see § 38-33.3-209.4(2)); and
- the obligation to provide annual education to the owners regarding the "general operations of the association and the rights and responsibilities of owners, the association, and its executive board under Colorado law" (see § 38-33.3-209.7).

If you have any questions regarding these matters or if you would like any further assistance from me, please feel free to contact me.

Jim Clay, President
Pine River Ranches Landowners Association
May 30, 2007
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Sincerely yours,

GOLDMAN, ROBBINS & NICHOLSON, P.C.

/s/

Lindsey Nicholson
Direct e-mail: nicholson@gm-law.com

LN/

Encl.: Excerpts of CCIOA applicable to preexisting communities

cc: Pat LeRoy

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EXCERPTS OF CCIOA PROVISIONS APPLICABLE TO PRRLOA:

§ 38-33.3-101. Short title

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

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 Laws 2006, Ch. 266, § 2, eff. 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

...
[§112 AND § 113 ARE N/A]
...

§ 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.

...
[§ 115 AND § 116 ARE N/A]
...

§ 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 Laws 2006, Ch. 266, § 3, eff. 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 Laws 2006, Ch. 266, § 3, eff. 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.

§ 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 Laws 1993, H.B.93-1070, § 7, eff. 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.

...
[§ 119 IS N/A]

...

§ 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\(7\)](#).

§ 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.

...

[§ 121 IS N/A]

...

§ 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.

§ 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.

§ 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.

Part 2. Creation, Alteration, and Termination of Common Interest Communities

...
[§ 201 AND § 202 ARE N/A]
...

§ 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.

...
[§§ 204 THROUGH 209 ARE N/A]
...

§ 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\(7\)](#).

§ 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.

§ 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.

§ 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\(7\)](#).

...
[§§ 210 THROUGH 216 ARE N/A]

...

§ 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.

...

[SUBSECTIONS (2) THROUGH (6) ARE N/A]

...

(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.

...

[§ 218 THROUGH § 221 ARE N/A]

...

[§ 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.

...

[§ 222 IS N/A]

...

Part 3. Management of the Common Interest Community (Refs & Annos)

§ 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.

§ 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;

...

[SUBSECTIONS (G) THROUGH (I) ARE N/A]

...

(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;

...

[SUBSECTION (N) IS N/A]

...

(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.

...

[SUBSECTION (2) IS N/A]

...

(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\(7\)](#).

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

...[SUBSECTIONS (1) THROUGH (3) ARE N/A]...

(4)

...

[SUBSECTION (A) IS N/A]

...

(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\(7\)](#).

...

[SUBSECTIONS (5) THROUGH (9) ARE N/A]

...

...

[§ 303.5 THROUGH § 307 ARE N/A]

...

[§ 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.

...

[§ 309 IS N/A]

...

§ 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.

...
[SUBSECTIONS (3) AND (4) ARE N/A]
...

§ 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.

...
[§ 311 THROUGH § 314 ARE N/A]
...

§ 38-33.3-315. Assessments for common expenses

...
[SUBSECTIONS (1) THROUGH (6) ARE N/A]
...

(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.

§ 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 Laws 1993, H.B.93-1070, § 21, eff. 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.

§ 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\(1\)\(d\)](#), 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.

§ 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.

§ 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.