

MEMORANDUM

To: All Associations and Managers

From: WLPP

Date: August 7, 2006

Re: Changes to CCIOA by Senate Bill 06 - 089.

Section 1 (Definitions): In C.R.S. 38-33.3-106.5, adds the definition for the term “Phased Community” as “a common interest community in which the Declarant retains Development Rights.”

Section 2 (Prohibitions Contrary to Public Policy): Adds a new sub-section to C.R.S. 38-33.3-106.5 that prohibits Association from requiring the use of cedar shakes or other flammable roofing materials.

Section 3 (Applicability to Preexisting Common Interest Communities): This section modifies C.R.S. 38-33.3-117 by deleting the requirement that a seller of a unit in a common interest community formed before July 1, 1992 disclose certain documents to the buyer. These disclosure requirements are replaced by the disclosure requirements added in Section 15 of SB 089.

Section 4 (Enforcement): This section merely cleans up the language in C.R.S. 38-3.3-123 addressing the recovery of costs and attorney fees.

Section 5 (Alternative Dispute Resolution): This section requires that an Association adopt a written policy setting forth its procedure for addressing disputes that arise between the Association and unit owners. This policy must be adopted by January 1, 2007.

Section 6 (Public Disclosures): This section amends C.R.S. 38-33.3-209.4 by deleting the requirement that an Association disclose on an *annual* basis (a) the name of the Association, (b) the name of the Association’s designated agent or management company, (c) the physical address and telephone number for the association and designated agent or management company, (d) the name of the common interest community, (e) the initial date of the recording of the declaration, and (f) the reception number for this recording. Added is the requirement that these disclosures must be made by the Association *once*, within 90 days of assuming control from the Declarant. Additionally, the Association must make updated information available within 90 days of any change. Finally, this section also clarifies that the Association must make available to members the results of its most recent available financial audit.

Section 7 (Responsible Governance Policies): Amends C.R.S. 38-33.3-209.5 by requiring the adoption of a dispute resolution policy.

Section 8 (Amendment to Declaration): Relaxes procedure in C.R.S. 38-33.3-217 for notifying and obtaining consent of first mortgagees regarding proposed amendments to the Association's Declaration. The statutory procedure is no longer mandatory and consent can be obtained in other ways consistent with the Association's Declaration.

Section 9 (Power and Duties of Board): Amends C.R.S. 33.3-303 by adding a section that states officers and directors of an Association are subject to the good faith and reasonableness standards of the Colorado Nonprofit Act with regard to investment of reserve funds. This section also eliminates the requirement that an audit or review of the Association's books and records be performed every two years. It adds that an audit or review may be performed at the discretion of Board and must be performed upon request of 1/3 of the members. This section also clarifies that the person performing such audit must be "independent and qualified" and have at least a basic understanding of the principals of accounting as a result of business experience or education. This section also adds that the audit or review must cover the Association's financial statements, which shall be prepared using generally accepted accounting principals or the cash tax basis of accounting.

Section 10 (Meetings): This section simply cleans up the language in Section 38-33.3-310, pertaining to when members must be allowed to speak on an issue.

Section 11 (Voting): This section adds an exception to the secret ballot requirement for associations whose governing docs provide for election of board members by delegates on behalf of the owners. Also increases the number of owners required to request a secret ballot on issues affecting the community from 1 owner to 20% of owners present or represented by proxy. Finally, this section relaxes the requirements for persons allowed to count secret ballots. The change only requires that a board member be selected at an open meeting in a fair manner by the President of the Board or other person presiding over such meeting. The person must also not be a Board Members or a candidate. Prior to this change, interested persons had to be selected at random.

Section 12 (Conflict of Interest): This section changes C.R.S. 38-33.3-310.5 by adopting the conflict of interest provision in the Colorado Nonprofit Act. The Nonprofit Act expands on the definition of a conflicted interest transaction by including transactions involving an entity in which a board member, or their parent, grandparent, spouse, child, or sibling, is a director, officer, or has a financial interest. The Nonprofit Act also provides that a conflicted interest transaction will not be void if (1) it is disclosed and ratified by disinterested board members (2) ratified by the members or (3) if the transaction is fair to the Association.

Section 13 (Association Records): This section adds to C.R.S. 38-33.3-317 that without consent of the board, membership lists shall not be:

(a) obtained or used by any person for any purpose unrelated to the Association or the property subject to the Declaration,

(b) used solely 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,

(c) used for any commercial purpose, or

(d) sold to or purchased by any person. Also adds that Association records may be inspected at the next regularly scheduled meeting if such meeting occurs within thirty (30) days after such request.

Section 14 (Seller Disclosures): Repeals C.R.S. 38.33.3.223, pertaining to disclosures to buyers by seller of a unit in a common interest community. Replaced by disclosure requirements added in Section 15 of SB 089.

Section 15 (Disclosure to Buyer): This section amend C.R.S. 38-35.7-102 by adding certain disclosure requirements by sellers of units within a common interest community.

Section 16 (Insurance): This section amends C.R.S. 10-4-110.8 by adding requirements for when and how a unit owner may file claim against the policy of the Association. The following conditions must be met:

(1) the unit owner has contacted the board or the association's managing agent in writing and in accordance with any applicable association policies or procedures for owner-initiated insurance claims, regarding the subject matter of the claim;

(2) the unit owners has given the Association at least 15 days to respond in writing and if so requested, has given the Association's agent a reasonable opportunity to inspect the damage; and

(3) the subject matter of the claim falls within the Association's insurance responsibilities.