Chapter 5:
Common Interest Communities

An * in the left margin indicates a change in the statute, rule, or text since the last publication of the manual.

I. HOA Information and Resource Center

The HOA Information and Resource Center ("Center"), as promulgated by the Colorado Legislature in HB10-1278, and codified in § 12-10-801(1), C.R.S., became operational on January 1, 2011. The Center is organized within the Division of Real Estate under the Department of Regulatory Agencies ("DORA").

The Center collects information via registrations directly from unit owners' associations ("HOAs") and from inquiries and complaints filed by unit owners. The Center provides education, assistance and information to unit owners, HOA boards, declarants and other interested parties concerning their rights and responsibilities as enumerated in the Colorado Common Interest Ownership Act ("CCIOA"), § 38-33.3-101, C.R.S., *et seq*.

* The HOA Information Officer oversees the Center, and reviews, analyzes, and reports the data and information compiled in an Annual Report to the Director of the Division of Real Estate, pursuant to § 12-10-801(3), C.R.S.

* During 2024, the Center was reviewed by the Colorado Office of Policy, Research and Regulatory Reform ("COPRRR"). COPRRR's report was released on October 15, 2024 and is available for review by the public on COPRRR's website. [1] Resulting from the report, the Colorado General Assembly introduced SB25-184, *Concerning the Continuation of the HOA Information and Resource Center, and, In Connection Therewith, Implementing the Recommendations Contained in the 2024 Sunset Report By the Department of Regulatory Agencies*. This bill, signed and enacted by the Governor continues the Center through September 1, 2030.

II. HOA Registration

Every unit owners' association shall register annually with the Director of the Division of Real Estate and shall submit with its annual registration and basic association information, a fee in the amount set by the Director of the Division of Real Estate. The association must complete an initial registration and renew its registration on an annual basis, as well as update any relevant information within ninety (90) days of any change, as per § 38-33.3-401, C.R.S.

As part of the registration process, associations indicate whether they collect over $5,000. Associations that collect greater than $5,000 in annual revenue are required to pay the annual registration fee. Associations that are not authorized to make assessments and do not have any revenue, or that collect $5,000 or less in annual revenue are not required under the statute to pay the registration fee, however, this provision does not absolve associations from registering.

[1] Report is available at: https://coprrr.colorado.gov/

If an association fails to register, or if its annual registration has expired, its right to impose or enforce a lien for assessments under § 38-33.3-316, C.R.S., or to pursue an action or employ an enforcement mechanism otherwise available to it under § 38-33.3-123, C.R.S., is suspended until the association is validly registered. A lien for assessments that was previously recorded during a period in which the association was validly registered or before registration was required is not extinguished by the expiration of the association's registration; however, any pending enforcement proceedings related to the lien is suspended, and any applicable time limits are delayed, until the association is validly registered. An association's previously suspended right will be revived without penalty, once the association is validly registered.

III. Community Association Manager Licensing

The Community Association Manager (CAM) licensing program ended at the Division of Real Estate on June 30, 2019, and the Division no longer has any jurisdiction over community association managers. The Division has ceased to enforce any licensing, investigations, insurance, and continuing education requirements in this regard.

IV. HOA Statutes[2]

§ 12-10-501, C.R.S. Definitions. – Referenced in Chapter 4 Subdivision Laws, pages 4-2 to 4-3.

§ 12-10-801, C.R.S. HOA information and resource center – creation – duties – rules – subject to review – repeal.

Editor's note: *This section is similar to former §12-61-406.5 as it existed prior to 2019.*

(1) There is hereby created, within the division, the HOA information and resource center, the head of which shall be the HOA information officer. The HOA information officer shall be appointed by the executive director pursuant to section 13 of article XII of the state constitution.

(2) The HOA information officer shall be familiar with the "Colorado Common Interest Ownership Act", article 33.3 of title 38, also referred to in this section as the "act". No person who is or, within the immediately preceding ten years, has been licensed by or registered with the division or who owns stocks, bonds, or any pecuniary interest in a corporation subject in whole or in part to regulation by the division shall be appointed as HOA information officer. In addition, in conducting the search for an appointee, the executive director shall place a high premium on candidates who are balanced, independent, unbiased, and without any current financial ties to an HOA board or board member or to any person or entity that provides HOA management services. After being appointed, the HOA information officer shall refrain from engaging in any conduct or relationship that would create a conflict of interest or the appearance of a conflict of interest.

(3) (a) The HOA information officer shall act as a clearing house for information concerning the basic rights and duties of unit owners, declarants, and unit owners' associations under the act by:

[2] Colorado Revised Statutes are subject to change through the legislative process. Check the Division website for updates.

(I) Compiling a database about registered associations, including the name; address; e-mail address, if any; website, if any; and telephone number of each;

(II) Coordinating and assisting in the preparation of educational and reference materials, including materials to assist unit owners, executive boards, board members, and association managers in understanding their rights and responsibilities with respect to:

(A) Open meetings;

(B) Proper use of executive sessions;

(C) Removal of executive board members;

(D) Unit owners' right to speak at meetings of the executive board;

(E) Unit owners' obligation to pay assessments and the association's rights and responsibilities in pursuing collection of past-due amounts; and

(F) Other educational or reference materials that the HOA information officer deems necessary or appropriate;

(III) Monitoring changes in federal and state laws relating to common interest communities and providing information about the changes on the division's website; and

(IV) Providing information, including a "frequently asked questions" resource, on the division's website.

* (a.5) Repealed.

(b) The HOA information officer may:

(I) Employ one or more assistants as may be necessary to carry out his or her duties; and

(II) Request certain records from associations as necessary to carry out the HOA information officer's duties as set forth in this section.

(c) The HOA information officer shall track inquiries and complaints and report annually to the director regarding the number and types of inquiries and complaints received.

(4) The operating expenses of the HOA information and resource center shall be paid from the division of real estate cash fund, created in section 12-10-215, subject to annual appropriation.

(5) The director may adopt rules as necessary to implement this section and section 38-33.3-401. This subsection (5) shall not be construed to confer additional rule-making authority upon the director for any other purpose.

* (6) This section is repealed, effective September 1, 2030. Before the repeal, the HOA information and resource center and the HOA information officer's powers and duties under this section are scheduled for review in accordance with section 24-34-104.

§ 38-12-601, C.R.S. Unreasonable restrictions on electric vehicle charging systems – definitions.

(1) Notwithstanding any provision in the lease to the contrary, and subject to subsection (2) of this section:

(a) A tenant may install, at the tenant's expense for the tenant's own use, a level 1 or level 2 electric vehicle charging system on or in:

(I) The leased premises;

(II) An assigned or deeded parking space that is part of or assigned to the leased premises; or

(III) A parking space that is accessible to both the tenant and other tenants;

(b) A landlord shall not assess or charge a tenant any fee for the placement or use of an electric vehicle charging system; except that:

(I) The landlord may require reimbursement for the actual cost of electricity provided by the landlord that was used by the charging system or, alternatively, may charge a reasonable fee for access. If the charging system is part of a network for which a network fee is charged, the landlord's reimbursement may include the amount of the network fee. Nothing in this section requires a landlord to impose upon a tenant any fee or charge other than the rental payments specified in the lease.

(II) The landlord may require reimbursement for the cost of the installation of the charging system, including any additions or upgrades to existing wiring directly attributable to the requirements of the charging system, if the landlord places or causes the electric vehicle charging system to be placed at the request of the tenant; and

(III) If the tenant desires to place an electric vehicle charging system in an area accessible to other tenants, the landlord may assess or charge the tenant a reasonable fee to reserve a specific parking spot in which to install the charging system.

(c) A landlord shall not restrict parking based on a vehicle being a plug-in hybrid vehicle or plug-in electric vehicle.

(2) A landlord may require a tenant to comply with:

(a) Bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property;

(b) A requirement that the charging system be registered with the landlord within thirty days after installation; or

(c) Reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an electric vehicle charging system.

(3) A tenant may place an electric vehicle charging system in an area accessible to other tenants if:

(a) The charging system is in compliance with all applicable requirements adopted pursuant to subsection (2) of this section; and

(b) The tenant agrees in writing to:

(I) Comply with the landlord's design specifications for the installation of the charging system;

(II) Engage the services of a duly licensed and registered electrical contractor familiar with the installation and code requirements of an electric vehicle charging system; and

(III) (A) Provide, within fourteen days after receiving the landlord's consent for the installation, a certificate of insurance naming the landlord as an additional insured on the tenant's renters' insurance policy for any claim related to the installation, maintenance, or use of the system or, at the landlord's option, reimbursement to the landlord for the actual cost of any increased insurance premium amount attributable to the system, notwithstanding any provision to the contrary in the lease.

(B) A certificate of insurance under sub-subparagraph (A) of this subparagraph (III) must be provided within fourteen days after the tenant receives the landlord's consent for the installation. Reimbursement for an increased insurance premium amount under sub-subparagraph (A) of this subparagraph (III) must be provided within fourteen days after the tenant receives the landlord's invoice for the amount attributable to the system.

(4) If the landlord consents to a tenant's installation of an electric vehicle charging system on property accessible to other tenants, including a parking space, carport, or garage stall, then, unless otherwise specified in a written agreement with the landlord:

(a) The tenant, and each successive tenant with exclusive rights to the area where the charging system is installed, is responsible for any costs for damages to the charging system and to any other property of the landlord or of another tenant that arise or result from the installation, maintenance, repair, removal, or replacement of the charging system;

(b) Each successive tenant with exclusive rights to the area where the charging system is installed shall assume responsibility for the repair, maintenance, removal, and replacement of the charging system until the system has been removed;

(c) The tenant and each successive tenant with exclusive rights to the area where the system is installed shall at all times have and maintain an insurance policy covering the obligations of the tenant under this subsection (4) and shall name the landlord as an additional insured under the policy; and

(d) The tenant and each successive tenant with exclusive rights to the area where the system is installed is responsible for removing the system if reasonably necessary or convenient for the repair, maintenance, or replacement of any property of the landlord, whether or not leased to another tenant.

(5) A charging system installed at the tenant's cost is property of the tenant. Upon termination of the lease, if the charging system is removable, the tenant may either remove it or sell it to the landlord or another tenant for an agreed price. Nothing in this subsection (5) requires the landlord or another tenant to purchase the charging system.

(6) As used in this section:

(a) "Electric vehicle charging system" or "charging system" means a device that is used to provide electricity to a plug-in electric vehicle or plug-in hybrid vehicle, is designed to ensure that a safe connection has been made between the electric grid and the vehicle, and is able to communicate with the vehicle's control system so that electricity flows at an appropriate voltage and current level. An electric vehicle charging system may be wall-mounted or pedestal style and may provide multiple cords to connect with electric vehicles. An electric vehicle charging system must be certified by underwriters laboratories or an equivalent certification and must comply with the current version of article 625 of the national electrical code.

(b) "Level 1" means a charging system that provides charging through a one-hundred-twenty volt AC plug with a cord connector that meets the SAE international J1772 standard or a successor standard.

(c) "Level 2" means a charging system that provides charging through a two-hundred-eight to two-hundred-forty volt AC plug with a cord connector that meets the SAE international J1772 standard or a successor standard.

(7) This section applies to residential rental properties and commercial rental properties.

V. Condominium Ownership Act

Title 38, Article 33, C.R.S. – Condominium Ownership Act

Also see Colorado Common Interest Ownership Act in Part VI of this chapter

Note: The portions printed below are only those portions of the old condominium act that pertain to timeshare and conversion projects and that are still in place. This Condominium Act was *superseded* by the Colorado Common Interest Ownership Act July 1, 1992.

§ 38-33-101, C.R.S. Short title.

This article shall be known and may be cited as the "Condominium Ownership Act".

§ 38-33-102, C.R.S. Condominium ownership recognized.

Condominium ownership of real property is recognized in this state. Whether created before or after April 30, 1963, such ownership shall be deemed to consist of a separate estate in an individual air space unit of a multi-unit property together with an undivided interest in common elements. The separate estate of any condominium owner of an individual air space unit and his common ownership of such common elements as are appurtenant to his individual air space unit by the terms of the recorded declaration are inseparable for any period of condominium ownership that is prescribed by the recorded declaration. Condominium ownership may exist on land owned in fee simple or held under an estate for years.

§ 38-33-103, C.R.S. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Condominium unit" means an individual air space unit together with the interest in the common elements appurtenant to such unit.

(2) "Declaration" is an instrument recorded pursuant to section 38-33-105 and which defines the character, duration, rights, obligations, and limitations of condominium ownership.

(3) Unless otherwise provided in the declaration or by written consent of all the condominium owners, "general common elements" means: The land or the interest therein on which a building or buildings are located; the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of such building or buildings; the basements, yards, gardens, parking areas, and storage spaces; the premises for the lodging of custodians or persons in charge of the property; installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, central air conditioning, and incinerating; the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use; such community and commercial facilities as may be provided for in the declaration; and all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

(4) "Individual air space unit" consists of any enclosed room or rooms occupying all or part of a floor or floors in a building of one or more floors to be used for residential, professional, commercial, or industrial purposes which has access to a public street.

(5) "Limited common elements" means those common elements designated in the declaration as reserved for use by fewer than all the owners of the individual air space units.

§ 38-33-104, C.R.S. Assessment of condominium ownership.

Whenever condominium ownership of real property is created or separate assessment of condominium units is desired, a written notice thereof shall be delivered to the assessor of the county in which said real property is situated, which notice shall set forth descriptions of the condominium units. Thereafter all taxes, assessments, and other charges of this state or of any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each condominium unit, each of which shall be carried on the tax books as a separate and distinct parcel for that purpose and not on the building or property as a whole. The valuation of the general and limited common elements shall be assessed proportionately upon the individual air space unit in the manner provided in the declaration. The lien for taxes assessed to any individual condominium owner shall be confined to his condominium unit and to his undivided interest in the general and limited common elements. No forfeiture or sale of any condominium unit

for delinquent taxes, assessments, or charges shall divest or in any way affect the title of other condominium units.

§ 38-33-105, C.R.S. Recording of declaration – certain rules and laws to apply.

(1) The declaration shall be recorded in the county where the condominium property is located. Such declaration shall provide for the filing for record of a map properly locating condominium units. Any instrument affecting the condominium unit may legally describe it by the identifying condominium unit number or symbol as shown on such map. If such declaration provides for the disposition of condominium units in the event of the destruction or obsolescence of buildings in which such units are situate and restricts partition of the common elements, the rules or laws known as the rule against perpetuities and the rule prohibiting unlawful restraints on alienation shall not be applied to defeat or limit any such provisions.

(2) To the extent that any such declaration contains a mandatory requirement that all condominium unit owners be members of an association or corporation or provides for the payment of charges assessed by the association upon condominium units or the appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence, any rule of law to the contrary notwithstanding, the same shall be considered as covenants running with the land binding upon all condominium owners and their successors in interest. Any common law rule terminating agency upon death or disability of a principal shall not be applied to defeat or limit any such provisions.

§ 38-33-105.5, C.R.S. Contents of declaration.

(1) The declaration shall contain:

- (a) The name of the condominium property, which shall include the word "condominium" or be followed by the words "a condominium";
- (b) The name of every county in which any part of the condominium property is situated;
- (c) A legally sufficient description of the real estate included in the condominium property;
- (d) A description or delineation of the boundaries of each condominium unit, including its identifying number;
- (e) A statement of the maximum number of condominium units that may be created by the subdivision or conversion of units in a multiple-unit dwelling owned by the declarant;
- (f) A description of any limited common elements;
- (g) A description of all general common elements;
- (h) A description of all general common elements which may be conveyed to any person or entity other than the condominium unit owners;
- (i) A description of all general common elements which may be allocated subsequently as limited common elements, together with a statement that they may be so allocated, and a description of the method by which the allocations are to be made;
- (j) An allocation to each condominium unit of an undivided interest in the general common elements, a portion of the votes in the association, and a percentage or fraction of the common expenses of the association;
- (k) Any restrictions on the use, occupancy, or alienation of the condominium units;
- (*l*) The recording data for recorded easements and licenses appurtenant to, or included in, the condominium property or to which any portion of the condominium property is or may become subject;
- (m) Reasonable provisions concerning the manner in which notice of matters affecting the condominium property may be given to condominium unit owners by the association or other condominium unit owners; and

(n) Any other matters the declarant deems appropriate.

(2) This section shall apply to any condominium ownership of property created on or after July 1, 1983.

§ 38-33-106, C.R.S. Condominium bylaws – contents – exemptions.

(1) Unless exempted, the administration and operation of multi-unit condominiums shall be governed by the declaration.

(2) At or before the execution of a contract for sale and, if none, before closing, every initial bona fide condominium unit buyer shall be provided by the seller with a copy of the bylaws, with amendments, if any, of the unit owners' association or corporation, and such bylaws and amendments shall be of a size print or type to be clearly legible.

(3) The bylaws shall contain or provide for at least the following:

(a) The election from among the unit owners of a board of managers, the number of persons constituting such board, and that the terms of at least one-third of the members of the board shall expire annually; the powers and duties of the board; the compensation, if any, of the members of the board; the method of removal from office of members of the board; and whether or not the board may engage the services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board may be delegated by the board to either or both of them; however, the board when so delegating shall not be relieved of its responsibility under the declaration;

(b) The method of calling meetings of the unit owners; the method of allocating votes to unit owners; what percentage of the unit owners, if other than a majority, constitutes a quorum; and what percentage is necessary to adopt decisions binding on all unit owners;

(c) The election of a president from among the board of managers, who shall preside over the meetings of the board of managers and of the unit owners;

(d) The election of a secretary, who shall keep the minutes of all meetings of the board of managers and of the unit owners and who, in general, shall perform all the duties incident to the office of secretary;

(e) The election of a treasurer, who shall keep the financial records and books of account. The treasurer may also serve as the secretary.

(f) The authorization to the board of managers to designate and remove personnel necessary for the operation, maintenance, repair, and replacement of the common elements;

(g) A statement that the unit owners and their mortgagees, if applicable, may inspect the records of receipts and expenditures of the board of managers pursuant to section 38-33-107 at convenient weekday business hours, and that, upon ten days' notice to the manager or board of managers and payment of a reasonable fee, any unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner;

(h) A statement as to whether or not the condominium association is a not for profit corporation, an unincorporated association, or a corporation;

(i) The method of adopting and of amending administrative rules and regulations governing the operation and use of the common elements;

(j) The percentage of votes required to modify or amend the bylaws, but each one of the particulars set forth in this section shall always be embodied in the bylaws;

(k) The maintenance, repair, replacement, and improvement of the general and limited common elements and payments therefor, including a statement of whether or not such work requires prior approval of the unit owners' association or corporation when it would involve a large expense or exceed a certain amount;

(*l*) The method of estimating the amount of the budget; the manner of assessing and collecting from the unit owners their respective shares of such estimated expenses and of any other expenses lawfully agreed upon; and a statement concerning the division, if any, of the assessment charge between general and limited common elements and the amount or percent of such division;

(m) A list of the services provided by the unit owners' association or corporation which are paid for out of the regular assessment;

(n) A statement clearly and separately indicating what assessments, debts, or other obligations are assumed by the unit owner on his condominium unit;

(o) A statement as to whether or not additional liens, other than mechanics' liens, assessment liens, or tax liens, may be obtained against the general or limited common elements then existing in which the unit owner has a percentage ownership;

(p) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the general and limited common elements as are designed to prevent unreasonable interference with the use of their respective units and said common elements by the several unit owners;

(q) Such restrictions on and requirements concerning the sale or lease of a unit including rights of first refusal on sale and any other restraints on the free alienability of the unit;

(r) A statement listing all major recreational facilities and to whom they are available and clearly indicating whether or not fees or charges, if any, in conjunction therewith, are in addition to the regular assessment;

(s) A statement relating to new additions of general and limited common elements to be constructed, including but not limited to:

(I) The effect on a unit owner in reference to his obligation for payment of the common expenses, including new recreational facilities, costs, and fees, if any;

(II) The effect on a unit owner in reference to his ownership interest in the existing general and limited common elements and new general and limited common elements;

(III) The effect on a unit owner in reference to his voting power in the association.

(4) Any declaration recorded on or after January 1, 1976, shall not conflict with the provisions of this section or bylaws made in accordance with this section. The requirements contained in paragraphs (k) to (s) of subsection (3) of this section need not be included in the bylaws if they are set forth in the declaration.

(5) This section shall not apply to:

(a) Commercial or industrial condominiums or any other condominiums not used for residential use;

(b) Condominiums of ten units or less;

(c) Condominiums established by a declaration recorded prior to January 1, 1976.

§ 38-33-107, C.R.S. Records of receipts and expenditures – availability for examination.

The manager or board of managers, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the general and limited common elements. Such records authorizing the payments shall be available for examination by the unit owners at convenient weekday business hours.

§ 38-33-108, C.R.S. Violations – penalty.

Any person who knowingly and willfully violates the provisions of section 38-33-106 or 38-33-107 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

§ 38-33-109, C.R.S. Unit owners' liability.

In any suit or arbitration against a condominium unit owners' association wherein damages are awarded or settlement is made, the individual unit owner's liability in his capacity as a percentage owner of the general or limited common elements or as a member of the condominium association shall not exceed the amount of damages or settlement multiplied by his percentage ownership in the general or limited common elements, as the case may be. In the case of incorporation by unit owners, their liability as stockholders shall be determined as any other corporate stockholder.

§ 38-33-110, C.R.S. Time-sharing – definitions.

As used in this section and section 38-33-111, unless the context otherwise requires:

(1) (a) "Interval estate" means a combination of:

(I) An estate for years terminating on a date certain, during which years title to a time share unit circulates among the interval owners in accordance with a fixed schedule, vesting in each such interval owner in turn for a period of time established by the said schedule, with the series thus established recurring annually until the arrival of the date certain; and

(II) A vested future interest in the same unit, consisting of an undivided interest in the remainder in fee simple, the magnitude of the future interest having been established by the time of the creation of the interval estate either by the project instruments or by the deed conveying the interval estate. The estate for years shall not be deemed to merge with the future interest, but neither the estate for years nor the future interest shall be conveyed or encumbered separately from the other.

(b) "Interval estate" also means an estate for years as described in subparagraph (I) of paragraph (a) of this subsection (1) where the remainder estate, as defined either by the project instruments or by the deed conveying the interval estate, is retained by the developer or his successors in interest.

(2) "Interval owner" means a person vested with legal title to an interval estate.

(3) "Interval unit" means a unit the title to which is or is to be divided into interval estates.

(4) "Project instruments" means the declaration, the bylaws, and any other set of restrictions or restrictive covenants, by whatever name denominated, which limit or restrict the use or occupancy of condominium units. "Project instruments" includes any lawful amendments to such instruments. "Project instruments" does not include any ordinance or other public regulation governing subdivisions, zoning, or other land use matters.

(5) "Time share estate" means either an interval estate or a time-span estate.

(6) "Time share owner" means a person vested with legal title to a time share estate.

(7) "Time share unit" means a unit the title to which is or is to be divided either into interval estates or time-span estates.

(8) "Time-span estate" means a combination of:

(a) An undivided interest in a present estate in fee simple in a unit, the magnitude of the interest having been established by the time of the creation of the time-span estate either by the project instruments or by the deed conveying the time-span estate; and

(b) An exclusive right to possession and occupancy of the unit during an annually recurring period of time defined and established by a recorded schedule set forth or referred to in the deed conveying the time-span estate.

(9) "Time-span owner" means a person vested with legal title to a time-span estate.

(10) "Time-span unit" means a unit the title to which is or is to be divided into time-span estates.

(11) "Unit owner" means a person vested with legal title to a unit, and, in the case of a time share unit, "unit owner" means all of the time share owners of that unit. When an estate is subject to a deed of trust or a trust deed, "unit owner" means the person entitled to beneficial enjoyment of the estate and not to any trustee or trustees holding title merely as security for an obligation.

§ 38-33-111, C.R.S. Special provisions applicable to time share ownership.

(1) No time share estates shall be created with respect to any condominium unit except pursuant to provisions in the project instruments expressly permitting the creation of such estates. Each time share estate shall constitute for all purposes an estate or interest in real property, separate and distinct from all other time share estates in the same unit or any other unit, and such estates may be separately conveyed and encumbered.

(2) Repealed.

(3) With respect to each time share unit, each owner of a time share estate therein shall be individually liable to the unit owners' association or corporation for all assessments, property taxes both real and personal, and charges levied pursuant to the project instruments against or with respect to that unit, and such association or corporation shall be liable for the payment thereof, except to the extent that such instruments provide to the contrary. However, with respect to each other, each time share owner shall be responsible only for a fraction of such assessments, property taxes both real and personal, and charges proportionate to the magnitude of his undivided interest in the fee to the unit.

(4) No person shall have standing to bring suit for partition of any time share unit except in accordance with such procedures, conditions, restrictions, and limitations as the project instruments and the deeds to the time share estates may specify. Upon the entry of a final order in such a suit, it shall be conclusively presumed that all such procedures, conditions, restrictions, and limitations were adhered to.

(5) In the event that any condemnation award, any insurance proceeds, the proceeds of any sale, or any other sums shall become payable to all of the time share owners of a unit, the portion payable to each time share owner shall be proportionate to the magnitude of his undivided interest in the fee to the unit.

§ 38-33-112, C.R.S. Notification to residential tenants.

(1) A developer who converts an existing multiple-unit dwelling into condominium units, upon recording of the declaration as required by section 38-33-105, shall notify each residential tenant of the dwelling of such conversion.

(2) Such notice shall be in writing and shall be sent by certified or registered mail, postage prepaid, and return receipt provided. Notice is complete upon mailing to the tenant at the tenant's last known address. Notice may also be made by delivery in person to the tenant of a copy of such written notice, in which event notice is complete upon such delivery.

(3) The notice described in subsection (1) of this section constitutes the notice to terminate the tenancy; except that a residential tenancy shall not be terminated prior to the expiration date of the existing lease agreement, if any, unless consented to by both the tenant and the developer. If the term of the lease has less than ninety days remaining when notification is mailed or delivered, as the case may be, or if there is no written lease agreement, residential tenancy shall not be terminated by the developer less than ninety days after the date the notice is mailed or

delivered, as the case may be, to the tenant, unless consented to by both the tenant and the developer. The return receipt is prima facie evidence of receipt of notice. If the term of the lease has less than ninety days remaining when notification is mailed or delivered, as the case may be, the tenant may hold over for the remainder of said ninety-day period under the same terms and conditions of the lease agreement if the tenant makes timely rental payments and performs other conditions of the lease agreement.

(4) The tenancy may be terminated within the ninety days prescribed in subsection (3) of this section upon agreement by the tenant in consideration of the payment of all moving expenses by the developer or for such other consideration as mutually agreed upon. Such tenancy may also be terminated within the ninety days prescribed in subsection (3) of this section upon failure by the tenant to make timely rental or lease payments.

(5) Any person who applies for a residential tenancy after the recording of the declaration shall be informed of this recording at the time of application, and any leases executed after such recording may provide for termination within less than ninety days provided that the terms of the lease conspicuously disclose the intention to convert the property containing the leased premises to condominium ownership.

(6) The general assembly hereby finds and declares that the notification procedure set forth in this section is a matter of statewide concern. No county, municipality, or other political subdivision whether or not vested with home rule powers under article XX of the Colorado constitution, shall adopt or enforce any ordinance, rule, regulation, or policy which conflicts with the provisions of this section.

§ 38-33-113, C.R.S. License to sell condominiums and time-shares.

The general assembly hereby finds and declares that the licensing of persons to sell condominiums and time shares is a matter of statewide concern.

VI. Colorado Common Interest Ownership Act

§ 38-33.3-101, C.R.S. Short title.

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

§ 38-33.3-102, C.R.S. 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, C.R.S. 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.

(33) "Xeriscape" means the combined application of the seven principles of landscape planning and design, soil analysis and improvement, hydro zoning of plants, use of practical turf areas, uses of mulches, irrigation efficiency, and appropriate maintenance under section 38-35.7-107(1)(a)(III)(A).

§ 38-33.3-104, C.R.S. 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, C.R.S. 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, C.R.S. 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, C.R.S. Prohibitions contrary to public policy – patriotic, political, or religious expression – public rights-of-way – fire prevention – renewable energy generation devices – affordable housing – drought prevention measures – child care – fire-hardened building materials – 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 a flag on a unit owner's property, in a window of the unit, or on a balcony ad-joining the unit. The association shall not prohibit or regulate the display of flags on the basis of their subject matter, message, or content; except that the association may prohibit flags bearing commercial messages. The association may adopt reasonable, content-neutral rules to regulate the number, location, and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole.

(b) Repealed.

(c) The display of a sign by the owner or occupant of a unit on property within the boundaries of the unit or in a window of the unit. The association shall not prohibit or regulate the display of window signs or yard signs on the basis of their subject matter, message, or content; except that the association may prohibit signs bearing commercial messages. The association may establish reasonable, con-tent-neutral sign regulations based on the number, placement, or size of the signs or on other objective factors.

(c.5) (I) The display of a religious item or symbol on the entry door or entry door frame of a unit; except that an association may prohibit the display or affixing of an item or symbol to the extent that it:

(A) Threatens public health or safety;

(B) Hinders the opening or closing of an entry door;

(C) Violates federal or state law or a municipal ordinance;

(D) Contains graphics, language, or any display that is obscene or otherwise illegal; or

(E) Individually or in combination with other religious items or symbols, covers an area greater than thirty-six square inches.

(II) If an association is performing maintenance, repair, or replacement of an entry door or door frame that serves a unit owner's separate interest, the unit owner may be required to remove a religious item or symbol during the time the work is being performed. After completion of the association's work, the unit owner may again display or affix the religious item or symbol. The association shall provide individual notice to the unit owner regarding the temporary removal of the religious item or symbol.

(III) As used in this subsection (1)(c.5), "religious item or symbol" means an item or symbol displayed because of a sincerely held religious belief.

(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.

(d.5) (I) The use of a public right-of-way in accordance with a local government's ordinance, resolution, rule, franchise, license, or charter provision regarding use of the public right-of-way. Additionally, the association shall not require that a public right-of-way be used in a certain manner.

(II) As used in this subsection (1)(d.5), "local government" means a statutory or home rule county, municipality, or city and county.

(e) The removal by a unit owner of trees, shrubs, or other vegetation to create defensible space around a dwelling for fire mitigation purposes, so long as such removal complies with a written defensible space plan created for the property by the Colorado state forest service, an individual or company certified by a local governmental entity to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the unit is located, and is no more extensive than necessary to comply with such plan. The plan shall be registered with the association before the commencement of work. The association may require changes to the plan if the association obtains the consent of the person, official, or agency that originally created the plan. The work shall comply with applicable association standards regarding slash removal, stump height, revegetation, and contractor regulations.

(f) (Deleted by amendment, L. 2006, p. 1215, §2, effective May 26, 2006.)

(g) Reasonable modifications to a unit or to common elements as necessary to afford a person with disabilities full use and enjoyment of the unit in accordance with the federal "Fair Housing Act of 1968", 42 U.S.C. sec. 3604 (f)(3)(A);

(h) (I) The right of a unit owner, public or private, to restrict or specify by deed, covenant, or other document:

(A) The permissible sale price, rental rate, or lease rate of the unit; or

(B) Occupancy or other requirements designed to promote affordable or workforce housing as such terms may be defined by the local housing authority.

(II) (A) Notwithstanding any other provision of law, the provisions of this subsection (1)(h) shall only apply to a county the population of which is less than one hundred thousand persons and that contains a ski lift licensed by the passenger tramway safety board created in section 12-150-104 (1).

(B) The provisions of this paragraph (h) shall not apply to a declarant-controlled community.

(III) Nothing in subparagraph (I) of this paragraph (h) shall be construed to prohibit the future owner of a unit against which a restriction or specification described in such subparagraph has been placed from lifting such restriction or specification on such unit as long as any unit so released is re-placed by another unit in the same common interest community on which the restriction or specification applies and the unit subject to the restriction or specification is reasonably equivalent to the unit being released in the determination of the beneficiary of the restriction or specification.

(IV) Except as otherwise provided in the declaration of the common interest community, any unit subject to the provisions of this paragraph (h) shall only be occupied by the owner of the unit.

(i) (I) (A) The use of xeriscape, nonvegetative turf grass, or drought-tolerant vegetative landscapes to provide ground covering to property for which a unit owner is responsible, including a limited common element or property owned by the unit owner. Associations may adopt and enforce design or aesthetic guidelines or rules that apply to nonvegetative turf grass and drought-tolerant vegetative landscapes or regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on a unit owner's property or on a limited common element or other property for which the unit owner is responsible. An association may restrict the installation of nonvegetative turf grass to rear yard locations only. This subsection (1)(i)(I)(A), as amended by Senate Bill 23-178, enacted in 2023, applies only to a unit that is a single-family home that shares one or more walls with another unit and does not apply to a unit that is a detached single-family home.

(B) This subsection (1)(i), as amended by House Bill 21-1229, enacted in 2021, does not apply to an association that includes time share units, as defined in section 38-33-110 (7).

(II) This paragraph (i) does not supersede any subdivision regulation of a county, city and county, or other municipality.

(i.5) (I) The use of xeriscape, nonvegetative turf grass, or drought-tolerant or nonvegetative landscapes to provide ground covering to property for which a unit owner is responsible, including a limited common element or property owned by the unit owner and any right-of-way or tree lawn that is the unit owner's responsibility to maintain. Associations may adopt and enforce design or aesthetic guidelines or rules that apply to drought-tolerant vegetative or nonvegetative landscapes or to vegetable gardens or that regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on property that is subject to the guidelines or rules; except that the guidelines or rules must:

(A) Not prohibit the use of nonvegetative turf grass in the backyard of a unit owner's property;

(B) Not unreasonably require the use of hardscape on more than twenty percent of the landscaping area of a unit owner's property;

(C) Allow a unit owner an option that consists of at least eighty percent drought-tolerant plantings; and

(D) Not prohibit vegetable gardens in the front, back, or side yard of a unit owner's property. As used in this subsection (1)(i.5), "vegetable garden"

means a plot of ground or an elevated soil bed in which pollinator plants, flowers, or vegetables or herbs, fruits, leafy greens, or other edible plants are cultivated.

(II) For the purposes of this subsection (1)(i.5), each association shall select at least three preplanned water-wise garden designs that are preapproved for installation in front yards within the common interest community. To be preapproved, a garden design must adhere to the principles of water-wise landscaping, as defined in section 37-60-135 (2)(l), which emphasize drought-tolerant and native plants, or be part of a water conservation program operated by a local water provider. Each garden design may be selected from the Colorado state university extension Plant Select organization's "downloadable designs" list or from a municipality, utility, or other entity that creates such garden designs. An association shall consider a unit owner's use of one of the garden designs selected by the association to be preapproved as complying with the association's aesthetic guidelines and shall allow a unit owner to use reasonable substitute plants when a plant in a design isn't available. Each association shall post on its public website, if any, information concerning preapprovals of garden designs.

(III) Except as described in subsection (1)(i.5)(IV) of this section, if an association knowingly violates this subsection (1)(i.5), a unit owner who is affected by the violation may bring a civil action to restrain further violation and to recover up to a maximum of five hundred dollars or the unit owner's actual damages, whichever is greater.

(IV) Before a unit owner commences a civil action as described in subsection (1)(i.5)(III) of this section, the unit owner shall notify the association in writing of the violation and allow the association forty-five days after receipt of the notice to cure the violation.

(V) Nothing in this subsection (1)(i.5) shall be construed to prohibit or restrict the authority of associations to:

(A) Adopt bona fide safety requirements consistent with applicable landscape codes or recognized safety standards for the protection of persons and property;

(B) Prohibit or restrict changes that interfere with the establishment and maintenance of fire buffers or defensible spaces; or

(C) Prohibit or restrict changes to existing grading, drainage, or other structural landscape elements necessary for the protection of persons and property.

(VI) Notwithstanding any provision of this section to the contrary, this subsection (1)(i.5) applies only to a unit that is a single-family detached home and does not apply to:

(A) A unit that is a single-family attached home that shares one or more walls with another unit; or

(B) A condominium.

(j) (I) The use of a rain barrel, as defined in section 37-96.5-102 (1), C.R.S., to collect precipitation from a residential rooftop in accordance with section 37-96.5-103, C.R.S.

(II) This paragraph (j) does not confer upon a resident of a common interest community the right to place a rain barrel on property or to connect a rain barrel to any property that is:

(A) Leased, except with permission of the lessor;

(B) A common element or a limited common element of a common interest community;

(C) Maintained by the unit owners' association for a common interest community; or

(D) Attached to one or more other units, except with permission of the owners of the other units.

(III) A common interest community may impose reasonable aesthetic requirements that govern the placement or external appearance of a rain barrel.

(k) (I) The operation of a family child care home, as defined in section 26.5-5-303, that is licensed pursuant to part 3 of article 5 of title 26.5.

(II) This subsection (1)(k) does not supersede any of the association's regulations concerning architectural control, parking, landscaping, noise, or other matters not specific to the operation of a business per se. The association shall make reasonable accommodation for fencing requirements applicable to licensed family child care homes.

(III) This subsection (1)(k) does not apply to a community qualified as housing for older persons under the federal "Housing for Older Persons Act of 1995", as amended, Pub.L. 104-76.

(IV) The association may require the owner or operator of a family child care home located in the common interest community to carry liability insurance, at reasonable levels determined by the association's executive board, providing coverage for any aspect of the operation of the family child care home for personal injury, death, damage to personal property, and damage to real property that occurs in or on the common elements, in the unit where the family child care home is located, or in any other unit located in the common interest community. The association shall be named as an additional insured on the liability insurance the family child care home is required to carry, and such insurance must be primary to any insurance the association is required to carry under the terms of the declaration.

(l) (I) The operation of a home-based business at a unit by the unit owner or a resident of the unit with the unit owner's permission.

(II) The operation of a home-based business in a common interest community must comply with, and an association may adopt and enforce, any reasonable and applicable rules and regulations governing architectural control, parking, landscaping, noise, nuisance, or other matters concerning the operation of a home-based business.

(III) The operation of a home-based business in a common interest community must comply with any reasonable and applicable noise or nuisance ordinances or resolutions of the municipality or county where the common interest community is located.

(IV) As used in this subsection (1)(l), unless the context otherwise requires, "home-based business" means a business for which the main office is located at, or the business operations primarily occur at, a unit.(1.5) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not effectively prohibit renewable energy generation devices, as defined in section 38-30-168.

(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.

(3) (a) Except as provided in subsection (3)(c) of this section, any provision in the declaration, bylaws, or rules and regulations of an association on March 12, 2024, that prohibits the

installation, use, or maintenance of fire-hardened building materials on a unit owner's property is void and unenforceable.

(b) On and after March 12, 2024, except as provided in subsection (3)(c) of this section, an association shall not:

(I) Prohibit the installation, use, or maintenance of fire-hardened building materials on a unit owner's property; or

(II) Adopt any provision in the declaration, bylaws, or rules and regulations of the association that prohibits the installation, use, or maintenance of fire-hardened building materials on a unit owner's property.

(c) An association may develop standards that impose reasonable restrictions on the design, dimensions, placement, or external appearance of fire-hardened building materials used for fencing so long as the standards do not:

(I) Increase the cost of the fencing by more than ten percent compared to other fire-hardened building materials used for fencing; or

(II) Require a period of review and approval that exceeds sixty days after the date on which the application for review is filed. If an application for installation of fire-hardened building materials for fencing is not denied or returned for modifications within sixty days after the application is filed, the application is deemed approved. The review process must be transparent and the basis for denial of an application must be described in reasonable detail and in writing. Denial of an application must not be arbitrary or capricious.

(d) Nothing in this subsection (3):

(I) Prohibits or restricts a unit owners' association from adopting bona fide safety requirements that are consistent with applicable building codes or nationally recognized safety standards; or

(II) Confers upon a property owner the right to construct or place fire-hardened building materials on property that is:

(A) Owned by another person;

(B) Leased, except with permission of the lessor; or

(C) A limited common element or general common element of a common interest community.

(e) As used in this subsection (3):

(I) "Fire-hardened building materials" means materials that meet:

(A) The criteria of ignition-resistant construction set forth in sections 504 to 506 of the most recent version of the International Wildland-urban Interface Code;

(B) The criteria for construction in wildland areas set forth in the most recent version of the NFPA standard 1140, "Standard for Wildland Fire Protection", and the criteria for reducing structure ignition hazards from wildland fire set forth in the most recent version of the NFPA standard 1144, "Reducing Structure Ignitions from Wildland Fire"; or

(C) The requirements for a wildfire-prepared home established by the IBHS.

(II) "IBHS" means the Insurance Institute for Business and Home Safety or its successor organization.

(III) "NFPA" means the National Fire Protection Association or its successor organization.

(4) (a) In a subject jurisdiction or an accessory dwelling unit supportive jurisdiction, no provision of a declaration, bylaw, or rule of an association that is adopted on or after May 13, 2024, may restrict the creation of an accessory dwelling unit as an accessory use to any single-unit detached dwelling in any way that is prohibited by section 29-35-403, and any provision of a declaration, bylaw, or rule that includes such a restriction is void as a matter of public policy.

(b) In a subject jurisdiction or an accessory dwelling unit supportive jurisdiction, no provision of a declaration, bylaw, or rule of an association that is adopted before May 13, 2024, may restrict the creation of an accessory dwelling unit as an accessory use to any single-unit detached dwelling in any way that is prohibited by section 29-35-403, and any provision of a declaration, bylaw, or rule that includes such a restriction is void as a matter of public policy.

(c) Subsections (4)(a) and (4)(b) of this section do not apply to reasonable restrictions on accessory dwelling units. As used in this subsection (4)(c), "reasonable restriction" means a substantive condition or requirement that does not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct, an accessory dwelling unit consistent with part 4 of article 35 of title 29.

(d) As used in this subsection (4), unless the context otherwise requires:

(I) "Accessory dwelling unit" has the same meaning as set forth in section 29-35-402 (2).

(II) "Accessory dwelling unit supportive jurisdiction" has the same meaning as set forth in section 29-35-402 (3).

(III) "Subject jurisdiction" has the same meaning as set forth in section 29-35-402 (21).

(5) (a) In a transit center or neighborhood center, an association shall not adopt a provision of a declaration, bylaw, or rule on or after May 13, 2024, that restricts the development of housing more than the local law that applies within the transit center or neighborhood center, and any provision of a declaration, bylaw, or rule that includes such a restriction is void as a matter of public policy.

(b) In a transit center or neighborhood center, no provision of a declaration, bylaw, or rule of an association that is adopted before May 13, 2024, may restrict the development of housing more than the local law that applies within the transit center or neighborhood center, and any provision of a declaration, bylaw, or rule that includes such a restriction is void as a matter of public policy.

(c) As used in this subsection (5), unless the context otherwise requires:

(I) "Local law" has the same meaning as set forth in section 29-35-103 (12).

(II) "Neighborhood center" has the same meaning as set forth in section 29-35-202 (5).

(III) "Transit center" has the same meaning as set forth in section 29-35-202 (9).

(6) (a) An association shall not prohibit or restrict the construction of accessory dwelling units or middle housing if the zoning laws of the local jurisdiction would otherwise allow such uses on a property. This subsection (6)(a) applies only to any declaration recorded on or after July 1, 2024, or in any bylaws or rules and regulations of the association adopted or amended on or after July 1, 2024, unless the declaration, bylaws, or rules and regulations contained such a restriction as of May 30, 2024.

(b) As used in this subsection (6), unless the context otherwise requires:

(I) "Accessory dwelling unit" means an internal, attached, or detached dwelling unit that is located on the same lot as a proposed or existing primary residence.

(II) "Middle housing" means a residential structure or structures that include between two and four separate dwelling units in a structure, a townhome building, or a cottage cluster of up to four units.

§ 38-33.3-106.7, C.R.S. Unreasonable restrictions on energy efficiency measures – definitions.

(1) (a) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not effectively prohibit the installation or use of an energy efficiency measure.

(b) As used in this section, "energy efficiency measure" means a device or structure that reduces the amount of energy derived from fossil fuels that is consumed by a residence or business located on the real property. "Energy efficiency measure" is further limited to include only the following types of devices or structures:

(I) An awning, shutter, trellis, ramada, or other shade structure that is marketed for the purpose of reducing energy consumption;

(II) A garage or attic fan and any associated vents or louvers;

(III) An evaporative cooler;

(IV) An energy-efficient outdoor lighting device, including without limitation a light fixture containing a coiled or straight fluorescent light bulb, and any solar recharging panel, motion detector, or other equipment connected to the lighting device;

(V) A retractable clothesline; and

(VI) A heat pump system, as defined in section 39-26-732 (2)(c).

(2) Subsection (1) of this section shall not apply to:

(a) Reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an energy efficiency measure. In creating reasonable aesthetic provisions, common interest communities shall consider:

(I) The impact on the purchase price and operating costs of the energy efficiency measure;

(II) The impact on the performance of the energy efficiency measure; and

(III) The criteria contained in the governing documents of the common interest community.

(b) Bona fide safety requirements, consistent with an applicable building code or recognized safe-ty standard, for the protection of persons and property.

(3) This section shall not be construed to confer upon any property owner the right to place an energy efficiency measure on property that is:

(a) Owned by another person;

(b) Leased, except with permission of the lessor;

(c) Collateral for a commercial loan, except with permission of the secured party; or

(d) A limited common element or general common element of a common interest community.

§ 38-33.3-106.8, C.R.S. Unreasonable restrictions on electric vehicle charging systems – legislative declaration – definitions.

(1) The general assembly finds, determines, and declares that:

(a) The widespread use of plug-in electric vehicles can dramatically improve energy efficiency and air quality for all Coloradans and should be encouraged wherever possible;

(b) Most homes in Colorado, including the vast majority of new homes, are in common interest communities;

(c) The primary purpose of this section is to ensure that common interest communities provide their residents with at least a meaningful opportunity to take advantage of the availability of plug-in electric vehicles rather than create artificial restrictions on the adoption of this promising technology; and

(d) The general assembly encourages common interest communities not only to allow electric vehicle charging stations and the parking of electric vehicles in accordance with this section, but also to apply for grants from the electric vehicle grant fund created in section 24-38.5-103 or otherwise fund the installation of charging stations on common property as an amenity for residents and guests.

(2) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, and except as provided in subsection (3) or (3.5) of this section, an association shall not:

(a) Prohibit a unit owner from using, or installing at the unit owner's expense for the unit owner's own use, a level 1 or level 2 electric vehicle charging system on or in:

(I) A unit;

(II) An assigned or deeded parking space that is part of or assigned to a unit; or

(III) A parking space that is accessible to both the unit owner and other unit owners;

(b) Assess or charge a unit owner any fee for the placement or use of an electric vehicle charging system on or in the unit owner's unit; except that the association may require reimbursement for the actual cost of electricity provided by the association that was used by the charging system or, alternatively, may charge a reasonable fee for access. If the charging system is part of a network for which a network fee is charged, the association's reimbursement may include the amount of the network fee. Nothing in this section requires an association to impose upon a unit owner any fee or charge other than the regular assessments specified in the declaration, bylaws, or rules and regulations of the association.

(c) Restrict parking based on a vehicle being a plug-in hybrid vehicle or plug-in electric vehicle.

(3) Subsection (2) of this section does not apply to:

(a) Bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property;

(b) A requirement that the charging system be registered with the association within thirty days after installation; or

(c) Reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an electric vehicle charging system.

(3.5) This section does 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).

(4) An association shall consent to a unit owner's placement of an electric vehicle charging system on a limited common element parking space, carport, or garage owned by the unit owner or otherwise assigned to the owner in the declaration or other recorded document if:

(a) Notwithstanding any existing ban on electric vehicle charging systems, the system otherwise complies with the declaration, bylaws, and rules and regulations of the association; and

(b) The unit owner agrees in writing to:

(I) Comply with the association's design specifications for the installation of the system;

(II) Engage the services of a duly licensed and registered electrical contractor familiar with the installation and code requirements of an electric vehicle charging system;

(III) Bear the expense of installation, including costs to restore any common elements disturbed in the process of installing the system; and

(IV) (A) Provide, within the time specified in sub-subparagraph (B) of this subparagraph (IV), a certificate of insurance naming the association as an additional insured on the homeowner's insurance policy for any claim related to the installation, maintenance, or use of the system or, if the system is located on a common element, reimbursement to the association for the actual cost of any increased insurance premium amount attributable to the system, notwithstanding any provision to the contrary in the association's declaration, bylaws, or rules and regulations.

(B) A certificate of insurance under sub-subparagraph (A) of this subparagraph (IV) must be provided within fourteen days after the unit owner receives the association's consent for the installation. Reimbursement for an increased insurance premium amount under sub-subparagraph (A) of this subparagraph (IV) must be provided within fourteen days after the unit owner receives the association's invoice for the amount attributable to the system.

(5) If the association consents to a unit owner's installation of an electric vehicle charging system on a limited common element, including a parking space, carport, or garage stall, then, unless otherwise specified in a written contract or in the declaration, bylaws, or rules and regulations of the association:

(a) The unit owner, and each successive unit owner with exclusive rights to the limited common element where the charging system is installed, is responsible for any costs for damages to the system, any other limited common element or general common element of the common interest community, and any adjacent units, garage stalls, carports, or parking spaces that arise or result from the installation, maintenance, repair, removal, or replacement of the system;

(b) Each successive unit owner with exclusive rights to the limited common element shall assume responsibility for the repair, maintenance, removal, and replacement of the charging system until the system has been removed;

(c) The unit owner and each successive unit owner with exclusive rights to the limited common element shall at all times have and maintain an insurance policy covering the obligations of the unit owner under this subsection (5), is subject to all obligations specified under subparagraph (IV) of paragraph (b) of subsection (4) of this section, and shall name the association as an additional insured under the policy; and

(d) The unit owner and each successive unit owner with exclusive rights to the limited common element is responsible for removing the system if reasonably necessary or convenient for the repair, maintenance, or replacement of the limited common elements or general common elements of the common interest community.

(6) A charging system installed at the unit owner's cost is property of the unit owner. Upon sale of the unit, if the charging system is removable, the unit owner may either remove it or sell it to the buyer of the unit or to the association for an agreed price. Nothing in this subsection (6) requires the buyer or the association to purchase the charging system.

(7) As used in this section:

(a) "Electric vehicle charging system" or "charging system" means a device that is used to provide electricity to a plug-in electric vehicle or plug-in hybrid vehicle, is designed to ensure that a safe connection has been made between the electric grid and the vehicle, and is able to communicate with the vehicle's control system so that electricity flows at

an appropriate voltage and current level. An electric vehicle charging system may be wall-mounted or pedestal style and may provide multiple cords to connect with electric vehicles. An electric vehicle charging system must be certified by underwriters laboratories or an equivalent certification and must comply with the current version of article 625 of the national electrical code.

(b) "Level 1" means a charging system that provides charging through a one-hundred-twenty volt AC plug with a cord connector that meets the SAE international J1772 standard or a successor standard.

(c) "Level 2" means a charging system that provides charging through a two-hundred-eight to two-hundred-forty volt AC plug with a cord connector that meets the SAE international J1772 standard or a successor standard.

(8) This section applies only to residential units.

§ 38-33.3-107, C.R.S. 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, C.R.S. 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, C.R.S. 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, C.R.S. 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, C.R.S. 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.

§ 38-33.3-112, C.R.S. Unconscionable agreement or term of contract.

(1) The court, upon finding as a matter of law that a contract or contract clause relating to a common interest community was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(2) Whenever it is claimed, or appears to the court, that a contract or any contract clause relating to a common interest community is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

   (a) The commercial setting of the negotiations;

   (b) Whether the first party has knowingly taken advantage of the inability of the second party reasonably to protect such second party's interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

   (c) The effect and purpose of the contract or clause; and

   (d) If a sale, any gross disparity at the time of contracting between the amount charged for the property and the value of that property measured by the price at which similar property was readily obtainable in similar transactions. A disparity between the contract price and the value of the property measured by the price at which similar property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

§ 38-33.3-113, C.R.S. Obligation of good faith.

Every contract or duty governed by this article imposes an obligation of good faith in its performance or enforcement.

§ 38-33.3-114, C.R.S. 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.

§ 38-33.3-115, C.R.S. Applicability to new common interest communities.

Except as provided in section 38-33.3-116, this article applies to all common interest communities created within this state on or after July 1, 1992. The provisions of sections 38-33-101 to 38-33-109 do not apply to common interest communities created on or after July 1, 1992. The provisions of sections 38-33-110 to 38-33-113 shall remain in effect for all common interest communities.

§ 38-33.3-116, C.R.S. Exception for new small cooperatives and small and limited expense planned communities.

(1) (a) Except as described in subsection (4) of this section, if a cooperative or planned community was created in this state on or after July 1, 1992, and either, contains only units restricted to nonresidential use or contains no more than twenty units and is not subject to any development rights, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article 33.3 is applicable.

(b) Except as described in subsection (4) of this section, if a planned community created in this state on or after July 1, 1992, but prior to July 1, 1998, contains no more than ten units and is not subject to any development rights or if a planned community provides, in its declaration, that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, must not exceed four hundred dollars, as adjusted pursuant to subsection (3) of this section, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article 33.3 is applicable.

(2) (Deleted by amendment, L. 2024)

(3) (a) The amount of the dollar limitation set forth in subsection (1)(b) of this section must be increased annually on July 1, 1999, and on July 1 of each succeeding year in accordance with any increase in the United States department of labor bureau of labor statistics final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year. The amount of the limitation must not be increased if the final consumer price index for the preceding calendar year did not increase and must not be decreased if the final consumer price index for the preceding calendar year decreased.

(b) The amount of the dollar limitation set forth in subsection (1)(b) of this section, as adjusted as described in subsection (3)(a) of this section, applies to each planned community described in subsection (1)(b) of this section, regardless of when the planned community was created.

(4) A cooperative or planned community that is subject only to sections 38-33.3-105 to 38-33.3-107 of this article 33.3 pursuant to subsection (1)(a) or (1)(b) of this section may elect to be subject to this entire article 33.3. A cooperative or planned community that so elects shall adopt an amendment to its declaration in accordance with section 38-33.3-217 evidencing the cooperative or planned community's election to be subject to this entire article 33.3.

§ 38-33.3-116.3, C.R.S. Large planned communities – exemption from certain requirements.

(1) A planned community shall be exempt from the provisions of this article as specified in subsection (3) of this section or as specifically exempted in any other provision of this article, if, at the time of recording the affidavit required pursuant to subsection (2) of this section, the

real estate upon which the planned community is created meets both of the following requirements:

(a) It consists of at least two hundred acres;

(b) It is approved for development of at least five hundred residential units, excluding any interval estates, time-share estates, or time-span estates but including any interval units created pursuant to sections 38-33-110 and 38-33-111, and at least twenty thousand square feet of commercial use.

(c) (Deleted by amendment, L. 95, p. 236, §2, effective July 1, 1995.)

(2) For an exemption authorized in subsection (1) of this section to apply, the property must be zoned within each county in which any part of such parcel is located, and the owner of the parcel shall record with the county clerk and recorder of each county in which any part of such parcel is located an affidavit setting forth the following:

(a) The legal description of such parcel of land;

(b) A statement that the party signing the affidavit is the owner of the parcel in its entirety in fee simple, excluding mineral interests;

(c) The acreage of the parcel;

(d) The zoning classification of the parcel, with a certified copy of applicable zoning regulations attached; and

(e) A statement that neither the owner nor any officer, director, shareholder, partner, or other entity having more than a ten-percent equity interest in the owner has been convicted of a felony within the last ten years.

(3) A large planned community for which an affidavit has been filed pursuant to subsection (2) of this section shall be exempt from the following provisions of this article:

(a) Section 38-33.3-205 (1) (e) to (1) (m);

(b) Section 38-33.3-207 (3);

(c) Section 38-33.3-208;

(d) Section 38-33.3-209 (2) (b) to (2) (d), (2) (f), (2) (g), (4), and (6);

(e) Section 38-33.3-210;

(f) Section 38-33.3-212;

(g) Section 38-33.3-213;

(h) Section 38-33.3-215;

(i) Section 38-33.3-217 (1);

(j) Section 38-33.3-304.

(4) Section 38-33.3-217 (4) shall be applicable as follows: Except to the extent expressly permitted or required by other provisions of this article, no amendment may create or increase special declarant rights, increase the number of units or the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(5) (a) The exemption authorized by this section shall continue for the large planned community so long as the owner signing the affidavit is the owner of the real estate described in subsection (2) of this section; except that:

(I) Upon the sale, conveyance, or other transfer of any portion of the real estate within the large planned community, the portion sold, conveyed, or transferred shall become subject to all the provisions of this article;

(II) Any common interest community created on some but not all of the real estate within the large planned community shall be created pursuant to this article; and

(III) When a planned community no longer qualifies as a large planned community, as described in subsection (1) of this section, the exemptions authorized by this section shall no longer be applicable.

(b) Notwithstanding the provisions of subparagraph (III) of paragraph (a) of this subsection (5), all real estate described in a recorded declaration creating a large planned community shall remain subject to such recorded declaration.

(6) The association established for a large planned community shall operate with respect to large planned community-wide matters and shall not otherwise operate as the exclusive unit owners' association with respect to any unit.

(7) The association established for a large planned community shall keep in its principal office and make reasonably available to all unit owners, unit owners' authorized agents, and prospective purchasers of units a complete legal description of all common elements within the large planned community.

§ 38-33.3-117, C.R.S. Applicability to preexisting common interest communities.

(1) Except as provided in section 38-33.3-119, the following sections 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;

(i.7) 38-33.3-303 (1)(b) and (3)(b);

(j) 38-33.3-311;

(k) 38-33.3-316;

(k.5) 38-33.3-316.3; and

(*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 apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after January 1, 2006:

(a) (Deleted by amendment, L. 2006, p. 1217, §3, effective May 26, 2006.)

(b) 38-33.3-124;

(c) 38-33.3-209.4 to 38-33.3-209.7;

(d) 38-33.3-217 (1);

(e) (Deleted by amendment, L. 2006, p. 1217, §3, effective May 26, 2006.)

(f) 38-33.3-301;

(g) 38-33.3-302 (3) and (4);

(h) 38-33.3-303 (1)(b), (3)(b), and (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);

(m) 38-33.3-317; and

(n) 38-33.3-401.

(1.7) Except as provided in section 38-33.3-119, section 38-33.3-209.5 (1)(b)(IX) 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, 2010.

(1.8) Except as provided in section 38-33.3-119, section 38-33.3-303 (4)(a) applies 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, 2017.

(1.9) Notwithstanding any other provision of law, section 38-33.3-303.5 applies to all common interest communities created within this state on, before, or after July 1, 1992, with respect to events and circumstances occurring on or after September 1, 2017.

(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, C.R.S. Procedure to elect treatment under the "Colorado Common Interest Ownership Act".

(1) Any organization created prior to July 1, 1992, may elect to have the common interest community be treated as if it were created after June 30, 1992, and thereby subject the common interest community to all of the provisions contained in this article, in the following manner:

(a) If there are members or stockholders entitled to vote thereon, the board of directors may adopt a resolution recommending that such association accept this article and directing that the question of acceptance be submitted to a vote at a meeting of the members or stockholders entitled to vote thereon, which may be either an annual or special meeting. The question shall also be submitted whenever one-twentieth, or, in the case of an association with over one thousand members, one-fortieth, of the members or stockholders entitled to vote thereon so request. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider electing to be treated as a common interest community organized after June 30, 1992, and thereby accepting the provisions of this article, together with a copy of this article, shall be given to each person entitled to

vote at the meeting within the time and in the manner provided in the articles of incorporation, declaration, bylaws, or other governing documents for such association for the giving of notice of meetings to members. Such election to accept the provisions of this article shall require for adoption at least sixty-seven percent of the votes that the persons present at such meeting in person or by proxy are entitled to cast.

(b) If there are no persons entitled to vote thereon, the election to be treated as a common interest community under this article may be made at a meeting of the board of directors pursuant to a majority vote of the directors in office.

(2) A statement of election to accept the provisions of this article shall be executed and acknowledged by the president or vice-president and by the secretary or an assistant secretary of such association and shall set forth:

(a) The name of the common interest community and association;

(b) That the association has elected to accept the provisions of this article;

(c) That there were persons entitled to vote thereon, the date of the meeting of such persons at which the election was made to be treated as a common interest community under this article, that a quorum was present at the meeting, and that such acceptance was authorized by at least sixty-seven percent of the votes that the members or stockholders present at such meeting in person or by proxy were entitled to cast;

(d) That there were no members or stockholders entitled to vote thereon, the date of the meeting of the board of directors at which election to accept this article was made, that a quorum was present at the meeting, and that such acceptance was authorized by a majority vote of the directors present at such meeting;

(e) (Deleted by amendment, L. 93, p. 645, §7, effective April 30, 1993.)

(f) The names and respective addresses of its officers and directors; and

(g) If there were no persons entitled to vote thereon but a common interest community has been created by virtue of compliance with section 38-33.3-103 (8), that the declarant desires for the common interest community to be subject to all the terms and provisions of this article.

(3) The original statement of election to be treated as a common interest community subject to the terms and conditions of this article shall be duly recorded in the office of the clerk and recorder for the county in which the common interest community is located.

(4) Upon the recording of the original statement of election to be treated as a common interest community subject to the provisions of this article, said common interest community shall be subject to all provisions of this article. Upon recording of the statement of election, such common interest community shall have the same powers and privileges and be subject to the same duties, restrictions, penalties, and liabilities as though it had been created after June 30, 1992.

(5) Notwithstanding any other provision of this section, and with respect to a common interest community making the election permitted by this section, this article shall apply only with respect to events and circumstances occurring on or after July 1, 1992, and does not invalidate provisions of any declaration, bylaws, or plats or maps in existence on June 30, 1992.

§ 38-33.3-119, C.R.S. Exception for small preexisting cooperatives and planned communities.

If a cooperative or planned community created within this state before July 1, 1992, contains no more than ten units and is not subject to any development rights, or if its declaration limits its annual common expense liability to the amount specified in section 38-33.3-116 (1), then it is subject only to sections 38-33.3-105 to 38-33.3-107 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions

of section 38-33.3-120, in which case all the sections enumerated in section 38-33.3-117 apply to that planned community.

§ 38-33.3-120, C.R.S. 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, C.R.S. 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.

§ 38-33.3-121, C.R.S. Applicability to nonresidential planned communities.

This article does not apply to a planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the article does apply to that planned community. This article applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted, only if the declaration so provides or the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

§ 38-33.3-122, C.R.S. 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, C.R.S. Enforcement – limitation.

(1) (a) If a unit owner fails to timely pay assessments or any money owed to the association, the association may require, without the necessity of commencing a legal proceeding, reimbursement for the following, in addition to the assessments or owed money:

(I) Actual collection costs of the unpaid assessments;

(II) Reasonable attorney fees incurred as a result of the failure to pay; except that the association is not entitled to reimbursement for attorney fees that exceed five thousand dollars or fifty percent of the assessments and any money owed to the association as described in the introductory portion of this subsection (1)(a), whichever is less; and

(III) Other actual costs incurred as a result of the failure to pay.

(b) For any failure to comply with this article or the declaration, bylaws, articles, or rules and regulations, other than the payment of assessments owed to the association, the association, any unit owner, or any class of unit owners adversely affected by the failure to comply may seek, without the necessity of commencing a legal proceeding, reimbursement for:

(I) Actual collection costs incurred as a result of the failure to comply; and

(II) Reasonable attorney fees and costs incurred as a result of the failure to comply; except that the association is not entitled to reimbursement for attorney fees that exceed five thousand dollars or fifty percent of the actual costs the association or unit owner incurred as a result of the failure to comply, whichever is less.

(c) (I) In any civil action to enforce or defend this article 33.3 or the declaration, bylaws, articles, or rules and regulations, the court shall award reasonable attorney fees, actual costs, and actual costs of collection to the prevailing party.

(II) In connection with any civil action described in subsection (1)(c)(I) of this section to collect money owed to an association from a unit owner, the court shall not award attorney fees to the association in an amount in excess of five thousand dollars or fifty percent of the actual costs the association incurred as a result of the failure to comply with this article 33.3 or with the declaration, bylaws, articles, or rules and regulations, whichever is less; except that the court may award attorney fees in excess of the limitations, based on the court's discretion, if the court finds that the unit owner was financially, physically, and reasonably able to comply with the declaration, bylaws, articles, or rules and regulations but willfully failed to comply.

(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.

(f) In determining reasonable attorney fees pursuant to this subsection (1) relating to an association's foreclosure of a lien against a unit owner for unpaid assessments, the court shall give consideration to all relevant factors, including:

(I) The amount of the unpaid assessments;

(II) Whether the amount of the attorney fees requested exceeds the amount of the unpaid assessments;

(III) Whether the amount of time spent or fees incurred by the attorney are disproportionate to the needs of the case, considering the complexity of the case or the efforts required to obtain the unpaid assessments;

* (III.5) Whether the association incurred inflated or duplicative attorney fees due to a stay in court proceedings pursuant to subsection (3) of this section for the association to come into strict compliance with applicable lien or foreclosure provisions of this title 38;

(IV) Whether the foreclosure action was contested or required the association to respond to unmeritorious defenses; and

(V) Other factors typically considered in determining an award of attorney fees.

(g) The limitations on attorney fees in subsections (1)(a)(II), (1)(b)(II), and (1)(c)(II) of this section are adjusted for inflation on August 1, 2025, and each year thereafter. Inflation is measured by the annual percentage change in the United States department of labor's bureau of labor statistics consumer price index, or a successor index, for Denver-Aurora-Lakewood for all items paid by urban consumers.

(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.

* (3) Notwithstanding any law to the contrary, as a condition precedent to recovering money owed to an association, collection costs, or reasonable attorney fees or costs through the foreclosure of an association lien, the association shall strictly comply with any applicable association lien or foreclosure provisions of this title 38 and any applicable lien or foreclosure provisions of the association's declaration, bylaws, articles, and rules and regulations. In addition, if a court determines that a common interest community is not in strict compliance with the lien or foreclosure provisions of this title 38, the court may stay the proceedings to grant the association a reasonable period of time to come into strict compliance with the law. During the stay in proceedings, the association shall not assess or accrue late fees, interest, or other delinquency charges against the unit owner.

§ 38-33.3-124, C.R.S. Legislative declaration – alternative dispute resolution encouraged – policy statement required.

(1) (a) (I) 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.

(II) The general assembly hereby specifically endorses and encourages associations, unit owners, managers, declarants, and all other parties to disputes arising under this article to agree to make use of all available public or private resources for alternative dispute resolution, including, without limitation, the resources offered by the office of dispute resolution within the Colorado judicial branch through its web site.

(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 agreement of the parties 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., or by another means of alternative dispute resolution under the "Dispute Resolution Act", part 3 of article 22 of title 13, C.R.S.

A. Creation, Alteration, and Termination

§ 38-33.3-201, C.R.S. Creation of common interest communities.

(1) (a) A common interest community may be created pursuant to this article 33.3 only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration must be:

(I) Executed by or with the express written authorization of the owner or owners of the real estate that is to be included in the common interest community, as shown in by the records of the county clerk and recorder's office of the county where the real estate is located;

(II) Recorded in every county in which any portion of the common interest community is located;

(III) Indexed in the grantor's index in the name of each person executing the declaration.

(b) No common interest community is created until the plat or map for the common interest community is recorded.

(2) In a common interest community with horizontal unit boundaries, a declaration, or an amendment to a declaration, creating or adding units shall include a certificate of completion executed by an independent licensed or registered engineer, surveyor, or architect stating that all structural components of all buildings containing or comprising any units thereby created are substantially completed.

§ 38-33.3-202, C.R.S. Unit boundaries.

(1) Except as provided by the declaration:

(a) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(c) Subject to the provisions of paragraph (b) of this subsection (1), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

§ 38-33.3-203, C.R.S. 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.

§ 38-33.3-204, C.R.S. Description of units.

A description of a unit may set forth the name of the common interest community, the recording data for the declaration, the county in which the common interest community is located, and the identifying number of the unit. Such description is a legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws. It shall not be necessary to use the term "unit" as a part of a legally sufficient description of a unit.

§ 38-33.3-205, C.R.S. Contents of declaration.

(1) The declaration must contain:

(a) The names of the common interest community and the association and a statement that the common interest community is a condominium, cooperative, or planned community;

(b) The name of every county in which any part of the common interest community is situated;

(c) A legally sufficient description of the real estate included in the common interest community;

(d) A statement of the maximum number of units that the declarant reserves the right to create;

(e) In a condominium or planned community, a description, which may be by plat or map, of the boundaries of each unit created by the declaration, including the unit's identifying number; or, in a cooperative, a description, which may be by plat or map, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;

(f) A description of any limited common elements, other than those specified in section 38-33.3-202 (1) (b) and (1) (d) or shown on the map as provided in section 38-33.3-209 (2) (j) and, in a planned community, any real estate that is or must become common elements;

(g) A description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in section 38-33.3-202 (1) (b) and (1) (d), together with a statement that they may be so allocated;

(h) A description of any development rights and other special declarant rights reserved by the declarant, together with a description sufficient to identify the real estate to which each of those rights applies and the time limit within which each of those rights must be exercised;

(i) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:

(I) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards; and

(II) A statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(j) Any other conditions or limitations under which the rights described in paragraph (h) of this subsection (1) may be exercised or will lapse;

(k) An allocation to each unit of the allocated interests in the manner described in section 38-33.3-207;

(*l*) Any restrictions on the use, occupancy, and alienation of the units and on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community or on termination of the common interest community;

(m) The recording data for recorded easements and licenses appurtenant to, or included in, the common interest community or to which any portion of the common interest community is or may become subject by virtue of a reservation in the declaration;

(n) All matters required by sections 38-33.3-201, 38-33.3-206 to 38-33.3-209, 38-33.3-215, 38-33.3-216, and 38-33.3-303 (4);

(o) Reasonable provisions concerning the manner in which notice of matters affecting the common interest community may be given to unit owners by the association or other unit owners;

(p) A statement, if applicable, that the planned community is a large planned community and is exercising certain exemptions from the "Colorado Common Interest Ownership Act" as such a large planned community;

(q) In a large planned community:

(I) A general description of every common element that the declarant is legally obligated to construct within the large planned community together with the approximate date by which each such common element is to be completed. The declarant shall be required to complete each such common element within a reasonable time after the date specified in the declaration, unless the declarant, due to an act of God, is unable to do so. The declarant shall not be legally obligated with respect to any common element not identified in the declaration.

(II) A general description of the type of any common element that the declarant anticipates may be constructed by, maintained by, or operated by the association. The association shall not assess members for the construction, maintenance, or operation of any common element that is not described pursuant to this subparagraph (II) unless such assessment is approved by the vote of a majority of the votes entitled to be cast in person or by proxy, other than by declarant, at a meeting duly convened as required by law.

(2) The declaration may contain any other matters the declarant considers appropriate.

(3) The plats and maps described in section 38-33.3-209 may contain certain information required to be included in the declaration by this section.

(4) A declarant may amend the declaration, a plat, or a map to correct clerical, typographical, or technical errors.

(5) A declarant may amend the declaration to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, or the federal national mortgage association.

§ 38-33.3-206, C.R.S. Leasehold common interest communities.

(1) Any lease, the expiration or termination of which may terminate the common interest community or reduce its size, must be recorded. In a leasehold condominium or leasehold planned community, the declaration must contain the signature of each lessor of any such lease in order for the provisions of this section to be effective. The declaration must state:

(a) The recording data for the lease;

(b) The date on which the lease is scheduled to expire;

(c) A legally sufficient description of the real estate subject to the lease;

(d) Any rights of the unit owners to redeem the reversion and the manner whereby those rights may be exercised or state that they do not have those rights;

(e) Any rights of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease or state that they do not have those rights; and

(f) Any rights of the unit owners to renew the lease and the conditions of any renewal or state that they do not have those rights.

(2) After the declaration for a leasehold condominium or leasehold planned community is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

(3) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(4) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests shall be reallocated in accordance with section 38-33.3-107 (1), as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

§ 38-33.3-207, C.R.S. Allocation of allocated interests.

(1) The declaration must allocate to each unit:

(a) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and, to the extent not allocated in the bylaws of the association, a portion of the votes in the association;

(b) In a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association, and, to the extent not allocated in the bylaws of the association, a portion of the votes in the association;

(c) In a planned community, a fraction or percentage of the common expenses of the association and, to the extent not allocated in the bylaws of the association, a portion of the votes in the association; except that, in a large planned community, the common expenses of the association may be paid from assessments and allocated as set forth in the declaration and the votes in the association may be allocated as set forth in the declaration.

(2) The declaration must state the formulas used to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(3) If units may be added to or withdrawn from the common interest community, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the common interest community after the addition or withdrawal.

(4) (a) The declaration may provide:

(I) That different allocations of votes shall be made to the units on particular matters specified in the declaration;

(II) For cumulative voting only for the purpose of electing members of the executive board;

(III) For class voting on specified issues affecting the class, including the election of the executive board; and

(IV) For assessments including, but not limited to, assessments on retail sales and services not to exceed six percent of the amount charged for the retail sale or service, and real estate transfers not to exceed three percent of the real estate sales price or its equivalent.

(b) A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this article, nor may units constitute a class because they are owned by a declarant.

(c) Assessments allowed under subparagraph (IV) of paragraph (a) of this subsection (4) shall be entitled to the lien provided for under section 38-33.3-316 (1) but shall not be entitled to the priority established by section 38-33.3-316 (2) (b).

(d) Communities with classes for voting specified in the declaration as allowed pursuant to subparagraph (III) of paragraph (a) of this subsection (4) may designate classes of members on a reasonable basis which do not allow the declarant to control the association beyond the period provided for in section 38-33.3-303, including, without limitation, residence owners, commercial space owners, and owners of lodging space and to elect members to the association executive board from such classes.

(5) Except for minor variations due to the rounding of fractions or percentages, the sum of the common expense liabilities and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units shall each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(6) In a condominium, the common elements are not subject to partition except as allowed for in section 38-33.3-312, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements not allowed for in section 38-33.3-312, that is made without the unit to which that interest is allocated is void.

(7) In a cooperative, any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

§ 38-33.3-208, C.R.S. Limited common elements.

(1) Except for the limited common elements described in section 38-33.3-202 (1) (b) and (1) (d), the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the unit owners whose units are affected.

(2) Subject to any provisions of the declaration, a limited common element may be reallocated between or among units after compliance with the procedure set forth in this subsection (2). In order to reallocate limited common elements between or among units, the unit owners of those units, as the applicants, must submit an application for approval of the proposed reallocation to the executive board, which application shall be executed by those unit owners and shall include:

(a) The proposed form for an amendment to the declaration as may be necessary to show the reallocation of limited common elements between or among units;

(b) A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the executive board; and

(c) Such other information as may be reasonably requested by the executive board. No reallocation shall be effective without the approval of the executive board. The reallocation shall be effectuated by an amendment signed by the association and by those unit owners between or among whose units the reallocation is made, which amendment shall be recorded as provided in section 38-33.3-217 (3). All costs and attorney fees incurred by the association as a result of the application shall be the sole obligation of the applicants.

(3) A common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with section 38-33.3-205 (1) (g). The allocations must be made by amendments to the declaration prepared, executed, and recorded by the declarant.

§ 38-33.3-209, C.R.S. Plats and maps.

(1) A plat or map is a part of the declaration and is required for all common interest communities except cooperatives. A map is required only for a common interest community with units having a horizontal boundary. The requirements of this section shall be deemed satisfied so long as all of the information required by this section is contained in the declaration, a map or a plat, or some combination of any two or all of the three. Each plat or map must be clear and legible. When a map is required under any provision of this article, the map, a plat, or the declaration shall contain a certification that all information required by this section is contained in the declaration, the map or a plat, or some combination of any two or all of the three.

(2) In addition to meeting the requirements of a land survey plat as set forth in section 38-51-106, each map shall show the following, except to the extent such information is contained in the declaration or on a plat:

(a) The name and a general schematic plan of the entire common interest community;

(b) The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(c) A legally sufficient description, which may be of the whole common interest community or any portion thereof, of any real estate subject to development rights and a description of the rights applicable to such real estate;

(d) The extent of any existing encroachments across any common interest community boundary;

(e) To the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the common interest community;

(f) The location and dimensions of the vertical boundaries of each unit and that unit's identifying number;

(g) The location, with reference to established data, of the horizontal boundaries of each unit and that unit's identifying number;

(g.5) Any units in which the declarant has reserved the right to create additional units or common elements, identified appropriately;

(h) A legally sufficient description of any real estate in which the unit owners will own only an estate for years;

(i) The distance between noncontiguous parcels of real estate comprising the common interest community; and

(j) The approximate location and dimensions of limited common elements, including porches, balconies, and patios, other than the limited common elements described in section 38-33.3-202 (1) (b) and (1) (d).

(3) (Deleted by amendment, L. 93, p. 648, §12, effective April 30, 1993.)

(4) (Deleted by amendment, L. 2007, p. 1799, §1, effective July 1, 2007.)

(5) Unless the declaration provides otherwise, the horizontal boundaries of any part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and maps.

(6) Upon exercising any development right, the declarant shall record an amendment to the declaration with respect to that real estate reflecting change as a result of such exercise necessary to conform to the requirements of subsections (1), (2), and (4) of this section or new certifications of maps previously recorded if those maps otherwise conform to the requirements of subsections (1), (2), and (4) of this section.

(7) Any certification of a map required by this article must be made by a registered land surveyor.

(8) The requirements of a plat or map under this article shall not be deemed to satisfy any subdivision platting requirement enacted by a county or municipality pursuant to section 30-28-133, C.R.S., part 1 of article 23 of title 31, C.R.S., or a similar provision of a home rule city, nor shall the plat or map requirements under this article be deemed to be incorporated into any subdivision platting requirements enacted by a county or municipality.

(9) Any plat or map that was recorded on or after July 1, 1998, but prior to July 1, 2007, and that satisfies the requirements of this section in effect on July 1, 2007, is deemed to have satisfied the requirements of this section at the time it was recorded.

§ 38-33.3-209.4, C.R.S. 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 (1.5) (c), 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 – due process for imposition of fines – procedure for collection of delinquent accounts – enforcement through small claims court – definitions.

(1) To promote responsible governance, associations shall:

(a) Maintain accurate and complete accounting records; and

* (a.5) Request periodically from a unit owner or designated contact, and maintain in the association's records for purposes of providing notice to the unit owner as required pursuant to this section and this title 38, a telephone number for phone calls, a cellular number for texts, and an email address for emails;

(b) Adopt policies, procedures, and rules and regulations concerning:

(I) Collection of unpaid assessments;

(II) Handling of conflicts of interest involving board members, which policies, procedures, and rules and regulations must include, at a minimum, the criteria described in subsection (4) of this section;

(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;

(VIII) Procedures for addressing disputes arising between the association and unit owners; and

(IX) When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial analysis. For the purposes of this subparagraph (IX), an internally conducted reserve study shall be sufficient.

(1.7) (a) With regard to a unit owner's delinquency in paying assessments, fines, or fees, an association shall:

(I) First contact the unit owner to alert the unit owner of the delinquency before taking action in relation to the delinquency pursuant to subsection (1.7)(a)(II) of this section and shall maintain a record of any contact, including information regarding the type of communication used to contact the unit owner and the date and time that the contact was made. Any contact that a community association manager or a property management company makes on behalf of an association pursuant to this subsection (1.7)(a) is deemed a contact made by the association and not by a debt collector as defined in section 5-16-103 (9). A unit owner may identify another person to serve as a designated contact for the unit owner to be contacted on the unit owner's behalf for purposes of this subsection (1.7)(a)(I). A unit owner may also notify the association if the unit owner prefers that correspondence and notices from the association be made in a language other than English. If a preference is not indicated, the association shall send the correspondence and notices in English. The unit owner and the unit owner's designated contact must receive the same correspondence and notices any time communications are sent out; except that the unit owner must receive the correspondence and notices in the language for which the unit owner has indicated a preference, if any. An association may determine the manner in which a unit owner may identify a designated contact. In contacting the unit owner or a designated contact, an association shall send the same type of notice of delinquency required to be sent pursuant to subsection (5)(a)(V) of this section, including sending it by certified mail, return receipt requested. In addition, the association shall contact the unit owner or designated contact by two of the following means:

(A) Telephone call to a telephone number that the association has on file because the unit owner or designated contact has provided the number to the association. If the association attempts to contact the unit owner or designated contact but is unable to contact the unit owner or designated contact, the association shall, if possible, leave a voice message for the unit owner or designated contact.

(B) Text message to a cellular number that the association has on file because the unit owner or designated contact has provided the cellular number to the association;

(C) E-mail to an e-mail address that the association has on file because the unit owner has provided the e-mail address to the association; or

* (D) By regular mail, if the unit owner or designated contact has not provided a telephone number, cellular number, or email address as additional means by which to receive notices.

(II) Refer a delinquent account to a collection agency or attorney only if a majority of the executive board votes to refer the matter in a recorded vote at a meeting conducted pursuant to section 38-33.3-308 (4)(e). A community association management or property management company acting on behalf of the association shall not refer a delinquent account to a collection agency or an attorney unless a

majority of the executive board votes to refer the matter in a recorded vote at a meeting conducted pursuant to section 38-33.3-308 (4)(e).

(b) (I) An association shall not impose the following on a daily basis against a unit owner:

(A) Late fees; or

(B) Fines assessed for violations of the declaration, bylaws, covenants, or other governing documents of the association. An association may only impose fines for violations in accordance with this subsection (1.7)(b).

(II) (A) With respect to any violation of the declaration, bylaws, covenants, or other governing documents of an association that the association reasonably determines threatens the public safety or health, the association shall provide the unit owner written notice, in English and in any language that the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section, of the violation informing the unit owner that the unit owner has seventy-two hours to cure the violation or the association may fine the unit owner.

(B) If, after an inspection of the unit, the association determines that the unit owner has not cured the violation within seventy-two hours after receiving the notice, the association may impose fines on the unit owner every other day and may take legal action against the unit owner for the violation; except that, in accordance with subsection (8)(c)(I) of this section, the association shall not pursue foreclosure against the unit owner based on fines owed.

(III) (A) If an association reasonably determines that a unit owner committed a violation of the declaration, bylaws, covenants, or other governing documents of the association, other than a violation that threatens the public safety or health, the association shall, through certified mail, return receipt requested, provide the unit owner written notice, in English and in any language that the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section, of the violation informing the unit owner that the unit owner has thirty days to cure the violation or the association, after conducting an inspection and determining that the unit owner has not cured the violation, may fine the unit owner; however, the total amount of fines imposed for the violation may not exceed five hundred dollars.

(B) An association shall grant a unit owner two consecutive thirty-day periods to cure a violation before the association may take legal action against the unit owner for the violation. In accordance with subsection (8)(c)(I) of this section, an association shall not pursue foreclosure against the unit owner based on fines owed.

(IV) If the unit owner cures the violation within the period to cure afforded the unit owner, the unit owner may notify the association of the cure and, if the unit owner sends with the notice visual evidence that the violation has been cured, the violation is deemed cured on the date that the unit owner sends the notice. If the unit owner's notice does not include visual evidence that the violation has been cured, the association shall inspect the unit as soon as practicable to determine if the violation has been cured.

(V) If the association does not receive notice from the unit owner that the violation has been cured, the association shall inspect the unit within seven days after the expiration of the thirty-day cure period to determine if the violation has been cured. If, after the inspection and whether or not the association received notice from the

unit owner that the violation was cured, the association determines that the violation has not been cured:

(A) A second thirty-day period to cure commences if only one thirty-day period to cure has elapsed; or

(B) The association may take legal action pursuant to this section if two thirty-day periods to cure have elapsed.

(VI) Once the unit owner cures a violation, the association shall notify the unit owner, in English and in any language that the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section:

(A) That the unit owner will not be further fined with regard to the violation; and

(B) Of any outstanding fine balance that the unit owner still owes the association.

(c) On a monthly basis and by first-class mail and, if the association has the relevant e-mail address, by e-mail, an association shall send to each unit owner who has any outstanding balance owed the association an itemized list of all assessments, fines, fees, and charges that the unit owner owes to the association. The association shall send the itemized list to the unit owner in English or in any language for which the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section and to any designated contact for the unit owner.

(2) Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary, the association may not fine any unit owner for an alleged violation unless:

(a) The association has adopted, and follows, a written policy governing the imposition of fines;

(b) (I) The policy includes a fair and impartial fact-finding process concerning whether the alleged violation actually occurred and whether the unit owner is the one who should be held responsible for the violation. This process may be informal but shall, at a minimum, guarantee the unit owner notice and an opportunity to be heard before an impartial decision maker.

(II) As used in this paragraph (b), "impartial decision maker" means a person or group of persons who have the authority to make a decision regarding the enforcement of the association's covenants, conditions, and restrictions, including its architectural requirements, and the other rules and regulations of the association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the association.

(c) The policy:

(I) Requires notice regarding the nature of the alleged violation, the action or actions required to cure the alleged violation, and the timeline for the fair and impartial fact-finding process required under subsection (2)(b) of this section. The association may send the unit owner the notice required under this subsection (2)(c)(I) in accordance with subsection (1.7)(a) of this section.

(II) Specifies the interval upon which fines may be levied in accordance with subsection (1.7)(b) of this section for violations that are continuing in nature.

(3) If, as a result of the fact-finding process described in subsection (2) of this section, it is determined that the unit owner should not be held responsible for the alleged violation, the association shall not allocate to the unit owner's account with the association any of the association's costs or attorney fees incurred in asserting or hearing the claim. Notwithstanding

any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, a unit owner shall not be deemed to have consented to pay such costs or fees.

(4) (a) The policies, procedures, and rules and regulations adopted by an association under subparagraph (II) of paragraph (b) of subsection (1) of this section must, at a minimum:

(I) Define or describe the circumstances under which a conflict of interest exists;

(II) Set forth procedures to follow when a conflict of interest exists, including how, and to whom, the conflict of interest must be disclosed and whether a board member must recuse himself or herself from discussing or voting on the issue; and

(III) Provide for the periodic review of the association's conflict of interest policies, procedures, and rules and regulations.

(b) The policies, procedures, or rules and regulations adopted under this subsection (4) must be in accordance with section 38-33.3-310.5.

* (5) (a) Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary or the absence of a relevant provision in the declaration, bylaws, articles, or rules or regulations, the association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, shall not use a collection agency or take legal action to collect unpaid assessments unless the association or a holder or assignee of the association's debt has adopted and follows a written policy governing the collection of unpaid assessments and unless the association complies with subsection (7) of this section. The policy must, at a minimum, specify:

(I) The date on which assessments must be paid to the entity and when an assessment is considered past due and delinquent;

(II) Any late fees and interest the entity is entitled to impose on a delinquent unit owner's account;

(III) Any returned-check charges the entity is entitled to impose;

(IV) The circumstances under which a unit owner is entitled to enter into a payment plan with the entity pursuant to section 38-33.3-316.3 and the minimum terms of the payment plan mandated by that section;

(V) That, before the entity turns over a delinquent account of a unit owner to a collection agency or refers it to an attorney for legal action, the entity must send the unit owner a notice of delinquency, by certified mail, return receipt requested, specifying:

(A) The total amount due, with an accounting of how the total was determined;

(B) Whether the opportunity to enter into a payment plan exists pursuant to section 38-33.3-316.3 and instructions for contacting the entity to enter into such a payment plan;

* (C) The name and contact information for the individual the unit owner may contact to request a copy of the unit owner's ledger in order to verify the amount of the debt, which copy of the ledger must be provided to the unit owner no later than seven business days after receipt of the unit owner's request;

* (D) That action is required to cure the delinquency and that failure to do so within thirty days may result in the unit owner's delinquent account being turned over to a collection agency, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the unit owner's property, the sale of the unit owner's unit at auction to pay delinquent assessments, which could result in the unit owner losing some or all of the unit owner's equity in

the unit, or other remedies available under Colorado law; and

* (E) The availability of, and instructions on how to access, free online information through the HOA information and resource center created in section 12-10-801 (1) relating to the collection of assessments by an association, including the association's ability to foreclose an association lien for unpaid assessments and force the sale of the unit owner's home, and the availability of online information from the federal department of housing and urban development concerning credit counseling before foreclosure that may be accessed through a link on the department of local affairs' website.

(VI) The method by which payments may be applied on the delinquent account of a unit owner; and

(VII) The legal remedies available to the entity to collect on a unit owner's delinquent account pursuant to the governing documents of the entity and Colorado law.

(b) As used in this subsection (5), "entity" means an association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person.

(6) A notice of delinquency that an association sends to a unit owner for unpaid assessments, fines, fees, or charges must:

(a) Be written in English and in any language that the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section;

(b) Specify whether the delinquency concerns unpaid assessments; unpaid fines, fees, or charges; or both unpaid assessments and unpaid fines, fees, or charges, and, if the notice of delinquency concerns unpaid assessments, the notice of delinquency must notify the unit owner that unpaid assessments may lead to foreclosure; and

(c) Include:

(I) A description of the steps the association must take before the association may take legal action against the unit owner, including a description of the association's cure process established in accordance with subsection (1.7)(b) of this section; and

(II) A description of what legal action the association may take against the unit owner, including a description of the types of matters that the association or unit owner may take to small claims court, including injunctive matters for which the association seeks an order requiring the unit owner to comply with the declaration, bylaws, covenants, or other governing documents of the association.

(7) (a) An association shall not commence a legal action to initiate a judicial foreclosure proceeding based on a unit owner's delinquency in paying assessments unless:

(I) The association has complied with each of the requirements in this section and in sections 38-33.3-316 and 38-33.3-316.3 related to a unit owner's delinquency in paying assessments;

(II) The association has provided the unit owner with a written offer to enter into a repayment plan pursuant to section 38-33.3-316.3 (2) that authorizes the unit owner to repay the debt in monthly installments over eighteen months. Under the repayment plan, the unit owner may choose the amount to be paid each month, so long as each payment must be in an amount of at least twenty-five dollars until the balance of the amount owed is less than twenty-five dollars; and

(III) After the association has provided the owner with a written offer to enter into a repayment plan, the unit owner has either:

(A) Failed to accept the repayment plan within thirty days after the written offer was made; or

(B) After accepting the repayment plan, failed to pay at least three of the monthly installments within fifteen days after the monthly installments were due.

(b) A unit owner who has entered into a repayment plan pursuant to subsection (7)(a) of this section may elect to pay the remaining balance owed under the repayment plan at any time during the duration of the repayment plan.

(8) An association shall not:

(a) Charge a rate of interest on unpaid assessments, fines, or fees in an amount greater than eight percent per year;

(b) Assess a fee or other charge to recover costs incurred for providing the unit owner a statement of the total amount that the unit owner owes; or

(c) Foreclose on an assessment lien if the debt securing the lien consists only of one or both of the following:

(I) Fines that the association has assessed against the unit owner; or

(II) Collection costs or attorney fees that the association has incurred and that are only associated with assessed fines.

(9) A party seeking to enforce rights and responsibilities arising under the declaration, bylaws, covenants, or other governing documents of an association in relation to disputes arising from assessments, fines, or fees owed to the association and for which the amount at issue does not exceed seven thousand five hundred dollars, exclusive of interest and costs, may file a claim in small claims court pursuant to section 13-6-403 (1)(b)(I).

(10) As used in this section, "notice of delinquency" means a written notice that an association sends to a unit owner to notify the unit owner of any unpaid assessments, fines, fees, or charges that the unit owner owes the association.

(11) With respect to any notices or other documentation that an association sends a unit owner through certified mail pursuant to this section or section 38-33.3-316 (8), the association may charge the unit owner an amount not to exceed the actual cost of the certified mail.

(12) This section, as amended by House Bill 22-1137, enacted in 2022, does not apply to the collection of delinquent payments of assessments, fines, or fees from a unit owner who owns a time share unit, as defined in section 38-33-110 (7), that is not occupied by residents on a full-time basis.

§ 38-33.3-209.6, C.R.S. 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, C.R.S. 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).

§ 38-33.3-210, C.R.S. Exercise of development rights.

(1) To exercise any development right reserved under section 38-33.3-205 (1) (h), the declarant shall prepare, execute, and record an amendment to the declaration and, in a condominium or planned community, comply with the provisions of section 38-33.3-209. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created and, except in the case of subdivision or conversion of units described in subsection (3) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 38-33.3-208.

(2) Additional development rights not previously reserved may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by section 38-33.3-205 or 38-33.3-206, as the case may be, and, in a condominium or planned community, the plats and maps include all matters required by section 38-33.3-209. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 38-33.3-205 (1) (h).

(3) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

  (a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; and

  (b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(4) If the declaration provides, pursuant to section 38-33.3-205, that all or a portion of the real estate is subject to a right of withdrawal:

  (a) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

  (b) If any portion of the real estate is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

(5) If a declarant fails to exercise any development right within the time limit and in accordance with any conditions or fixed limitations described in the declaration pursuant to section 38-33.3-205 (1) (h), or records an instrument surrendering a development right, that development right shall lapse unless the association, upon the request of the declarant or the owner of the real estate subject to development right, agrees to an extension of the time period for exercise of the development right or a reinstatement of the development right subject to whatever terms, conditions, and limitations the association may impose on the subsequent exercise of the development right. The extension or renewal of the development right and any terms, conditions, and limitations shall be included in an amendment executed by the declarant or the owner of the real estate subject to development right and the association.

§ 38-33.3-211, C.R.S. Alterations of units.

(1) Subject to the provisions of the declaration and other provisions of law, a unit owner:

  (a) May make any improvements or alterations to his unit that do not impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the common interest community;

(b) May not change the appearance of the common elements without permission of the association; or

(c) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the common interest community. Removal of partitions or creation of apertures under this paragraph (c) is not an alteration of boundaries.

§ 38-33.3-212, C.R.S. Relocation of boundaries between adjoining units.

(1) Subject to the provisions of the declaration and other provisions of law, and pursuant to the procedures described in section 38-33.3-217, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units.

(2) In order to relocate the boundaries between adjoining units, the owners of those units, as the applicant, must submit an application to the executive board, which application shall be executed by those owners and shall include:

(a) Evidence sufficient to the executive board that the applicant has complied with all local rules and ordinances and that the proposed relocation of boundaries does not violate the terms of any document evidencing a security interest;

(b) The proposed reallocation of interests, if any;

(c) The proposed form for amendments to the declaration, including the plats or maps, as may be necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers;

(d) A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the executive board; and

(e) Such other information as may be reasonably requested by the executive board.

(3) No relocation of boundaries between adjoining units shall be effected without the necessary amendments to the declaration, plats, or maps, executed and recorded pursuant to section 38-33.3-217 (3) and (5).

(4) All costs and attorney fees incurred by the association as a result of an application shall be the sole obligation of the applicant.

§ 38-33.3-213, C.R.S. Subdivision of units.

(1) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, and pursuant to the procedures described in this section, a unit owner may apply to the association to subdivide a unit.

(2) In order to subdivide a unit, the unit owner of such unit, as the applicant, must submit an application to the executive board, which application shall be executed by such owner and shall include:

(a) Evidence that the applicant of the proposed subdivision shall have complied with all building codes, fire codes, zoning codes, planned unit development requirements, master plans, and other applicable ordinances or resolutions adopted and enforced by the local governing body and that the proposed subdivision does not violate the terms of any document evidencing a security interest encumbering the unit;

(b) The proposed reallocation of interests, if any;

(c) The proposed form for amendments to the declaration, including the plats or maps, as may be necessary to show the units which are created by the subdivision and their dimensions, and identifying numbers;

(d) A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the executive board; and

(e) Such other information as may be reasonably requested by the executive board.

(3) No subdivision of units shall be effected without the necessary amendments to the declaration, plats, or maps, executed and recorded pursuant to section 38-33.3-217 (3) and (5).

(4) All costs and attorney fees incurred by the association as a result of an application shall be the sole obligation of the applicant.

§ 38-33.3-214, C.R.S. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and maps.

§ 38-33.3-215, C.R.S. Use for sales purposes.

A declarant may maintain sales offices, management offices, and models in the common interest community only if the declaration so provides. Except as provided in a declaration, any real estate in a common interest community used as a sales office, management office, or model and not designated a unit by the declaration is a common element. If a declarant ceases to be a unit owner, such declarant ceases to have any rights with regard to any real estate used as a sales office, management office, or model, unless it is removed promptly from the common interest community in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the common interest community. This section is subject to the provisions of other state laws and to local ordinances.

§ 38-33.3-216, C.R.S. Easement rights.

(1) Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this article or reserved in the declaration.

(2) In a planned community, subject to the provisions of the declaration and the ability of the association to regulate and convey or encumber the common elements as set forth in sections 38-33.3-302 (1)(f), 38-33.3-302.5, and 38-33.3-312, the unit owners have an easement:

(a) In the common elements for the purpose of access to their units; and

(b) To use the common elements and all other real estate that must become common elements for all other purposes.

§ 38-33.3-217, C.R.S. Amendment of declaration.

(1) (a) (I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (a), the declaration, including the plats and maps, may be amended only by the affirmative vote or agreement of unit owners of units to which more than fifty percent of the votes in the association are allocated or any larger percentage, not to exceed sixty-seven percent, that the declaration specifies. Any provision in the declaration that purports to specify a percentage larger than sixty-seven percent is hereby declared void as contrary to public policy, and until amended, such

provision shall be deemed to specify a percentage of sixty-seven percent. The declaration may specify a smaller percentage than a simple majority only if all of the units are restricted exclusively to nonresidential use. Nothing in this paragraph (a) shall be construed to prohibit the association from seeking a court order, in accordance with subsection (7) of this section, to reduce the required percentage to less than sixty-seven percent.

(II) If the declaration provides for an initial period of applicability to be followed by automatic extension periods, the declaration may be amended at any time in accordance with subparagraph (I) of this paragraph (a).

(III) This paragraph (a) shall not apply:

(A) To the extent that its application is limited by subsection (4) of this section;

(B) To amendments executed by a declarant under section 38-33.3-205 (4) and (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210, or 38-33.3-222;

(C) To amendments executed by an association under section 38-33.3-107, 38-33.3-206 (4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213, or 38-33.3-218 (11) and (12);

(D) To amendments executed by the district court for any county that includes all or any portion of a common interest community under subsection (7) of this section; or

(E) To amendments that affect phased communities or declarant-controlled communities.

(b) (I) If the declaration requires first mortgagees to approve or consent to amendments, but does not set forth a procedure for registration or notification of first mortgagees, the association may:

(A) Send a dated, written notice and a copy of any proposed amendment by certified mail to each first mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof; and

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

(II) A first mortgagee that does not deliver to the association a negative response within sixty days after the date of the notice specified in subparagraph (I) of this paragraph (b) shall be deemed to have approved the proposed amendment.

(III) The notification procedure set forth in this paragraph (b) is not mandatory. If the consent of first mortgagees is obtained without resort to this paragraph (b), and otherwise in accordance with the declaration, the notice to first mortgagees shall be considered sufficient.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Any amendment to a declaration that adds real estate to a common interest community must be executed by or with the express written authorization of the owner or owners of the real estate to be added, as shown by the records of the county clerk and recorder's office of the county where the real estate is located. Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation. An amendment must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the amendment.

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

(b) The sixty-seven-percent maximum percentage stated in paragraph (a) of subsection (1) of this section shall not apply to any common interest community in which one unit owner, by virtue of the declaration, bylaws, or other governing documents of the association, is allocated sixty-seven percent or more of the votes in the association.

(4.5) Except to the extent expressly permitted or required by other provisions of this article, no amendment may change the uses to which any unit is restricted in the absence of a vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(5) Amendments to the declaration required by this article to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) All expenses associated with preparing and recording an amendment to the declaration shall be the sole responsibility of:

(a) In the case of an amendment pursuant to sections 38-33.3-208 (2), 38-33.3-212, and 38-33.3-213, the unit owners desiring the amendment; and

(b) In the case of an amendment pursuant to section 38-33.3-208 (3), 38-33.3-209 (6), or 38-33.3-210, the declarant; and

(c) In all other cases, the association.

(7) (a) The association, acting through its executive board pursuant to section 38-33.3-303 (1), may petition the district court for any county that includes all or any portion of the common interest community for an order amending the declaration of the common interest community if:

(I) The association has twice sent notice of the proposed amendment to all unit owners that are entitled by the declaration to vote on the proposed amendment or are required for approval of the proposed amendment by any means allowed pursuant to the provisions regarding notice to members in sections 7-121-402 and 7-127-104, C.R.S., of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S.;

(II) The association has discussed the proposed amendment during at least one meeting of the association; and

(III) Unit owners of units to which are allocated more than fifty percent of the number of consents, approvals, or votes of the association that would be required to adopt the proposed amendment pursuant to the declaration have voted in favor of the proposed amendment.

(b) A petition filed pursuant to paragraph (a) of this subsection (7) shall include:

(I) A summary of:

(A) The procedures and requirements for amending the declaration that are set forth in the declaration;

(B) The proposed amendment to the declaration;

(C) The effect of and reason for the proposed amendment, including a statement of the circumstances that make the amendment necessary or advisable;

(D) The results of any vote taken with respect to the proposed amendment; and

(E) Any other matters that the association believes will be useful to the court in deciding whether to grant the petition; and

(II) As exhibits, copies of:

(A) The declaration as originally recorded and any recorded amendments to the declaration;

(B) The text of the proposed amendment;

(C) Copies of any notices sent pursuant to subparagraph (I) of paragraph (a) of this subsection (7); and

(D) Any other documents that the association believes will be useful to the court in deciding whether to grant the petition.

(c) Within three days of the filing of the petition, the district court shall set a date for hearing the petition. Unless the court finds that an emergency requires an immediate hearing, the hearing shall be held no earlier than forty-five days and no later than sixty days after the date the association filed the petition.

(d) No later than ten days after the date for hearing a petition is set pursuant to paragraph (c) of this subsection (7), the association shall:

(I) Send notice of the petition by any written means allowed pursuant to the provisions regarding notice to members in sections 7-121-402 and 7-127-104, C.R.S., of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., to any unit owner, by first-class mail, postage prepaid or by hand delivery to any declarant, and by first-class mail, postage prepaid, to any lender that holds a security interest in one or more units and is entitled by the declaration or any underwriting guidelines or requirements of that lender or of the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, or the government national mortgage corporation to vote on the proposed amendment. The notice shall include:

(A) A copy of the petition which need not include the exhibits attached to the original petition filed with the district court;

(B) The date the district court will hear the petition; and

(C) A statement that the court may grant the petition and order the proposed amendment to the declaration unless any declarant entitled by the declaration to vote on the proposed amendment, the federal housing administration, the veterans administration, more than thirty-three percent of the unit owners entitled by the declaration to vote on the proposed amendment, or more than thirty-three percent of the lenders that hold a security interest in one or more units and are entitled by the declaration to vote on the proposed amendment file written objections to the proposed amendment with the court prior to the hearing;

(II) File with the district court:

(A) A list of the names and mailing addresses of declarants, unit owners, and lenders that hold a security interest in one or more units and that are entitled by the declaration to vote on the proposed amendment; and

(B) A copy of the notice required by subparagraph (I) of this paragraph (d).

(e) The district court shall grant the petition after hearing if it finds that:

(I) The association has complied with all requirements of this subsection (7);

(II) No more than thirty-three percent of the unit owners entitled by the declaration to vote on the proposed amendment have filed written objections to the proposed amendment with the court prior to the hearing;

(III) Neither the federal housing administration nor the veterans administration is entitled to approve the proposed amendment, or if so entitled has not filed written objections to the proposed amendment with the court prior to the hearing;

(IV) Either the proposed amendment does not eliminate any rights or privileges designated in the declaration as belonging to a declarant or no declarant has filed written objections to the proposed amendment with the court prior to the hearing;

(V) Either the proposed amendment does not eliminate any rights or privileges designated in the declaration as belonging to any lenders that hold security interests in one or more units and that are entitled by the declaration to vote on the proposed amendment or no more than thirty-three percent of such lenders have filed written objections to the proposed amendment with the court prior to the hearing; and

(VI) The proposed amendment would neither terminate the declaration nor change the allocated interests of the unit owners as specified in the declaration, except as allowed pursuant to section 38-33.3-315.

(f) Upon granting a petition, the court shall enter an order approving the proposed amendment and requiring the association to record the amendment in each county that includes all or any portion of the common interest community. Once recorded, the amendment shall have the same legal effect as if it were adopted pursuant to any requirements set forth in the declaration.

§ 38-33.3-218, C.R.S. Termination of common interest community.

(1) Except in the case of a taking of all the units by eminent domain, or in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, a common interest community may be terminated only by agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the common interest community are restricted exclusively to nonresidential uses.

(1.5) No planned community that is required to exist pursuant to a development or site plan shall be terminated by agreement of unit owners, unless a copy of the termination agreement is sent by certified mail or hand delivered to the governing body of every municipality in which a portion of the planned community is situated or, if the planned community is situated in an unincorporated area, to the board of county commissioners for every county in which a portion of the planned community is situated.

(2) An agreement of unit owners to terminate must be evidenced by their execution of a termination agreement or ratifications thereof in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(3) In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all of the common elements and units of the common interest community must be sold following termination. If, pursuant to the agreement, any real estate in the common interest community is

to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) In the case of a condominium or planned community containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or all the unit owners consent to the sale.

(5) Subject to the provisions of a termination agreement described in subsections (3) and (4) of this section, the association, on behalf of the unit owners, may contract for the sale of real estate in a common interest community following termination, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all the powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all the powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in accordance with subsections (8), (9), and (10) of this section, taking into account the value of property owned or distributed that is not sold so as to preserve the proportionate interests of each unit owner with respect to all property cumulatively. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this article or the declaration.

(6) (a) In a planned community, if all or a portion of the common elements are not to be sold following termination, title to the common elements not sold vests in the unit owners upon termination as tenants in common in fractional interests that maintain, after taking into account the fair market value of property owned and the proceeds of property sold, their respective interests as provided in subsection (10) of this section with respect to all property appraised under said subsection (10), and liens on the units shift accordingly.

(b) In a common interest community, containing units having horizontal boundaries described in the declaration, title to the units not to be sold following termination vests in the unit owners upon termination as tenants in common in fractional interests that maintain, after taking into account the fair market value of property owned and the proceeds of property sold, their respective interests as provided in subsection (10) of this section with respect to all property appraised under said subsection (10), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted such unit.

(7) Following termination of the common interest community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear.

(8) Upon termination of a condominium or planned community, creditors of the association who obtain a lien and duly record it in every county in which any portion of the common interest community is located are to be treated as if they had perfected liens on the units immediately before termination or when the lien is obtained and recorded, whichever is later.

(9) In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, upon termination, creditors of the association who obtain a lien and duly record it in every county in which any

portion of the cooperative is located are to be treated as if they had perfected liens against the cooperative immediately before termination or when the lien is obtained and recorded, whichever is later. Unless the declaration provides that all creditors of the association have that priority:

(a) The lien of each creditor of the association which was perfected against the association before termination becomes, upon termination, a lien against each unit owner's interest in the unit as of the date the lien was perfected;

(b) Any other creditor of the association who obtains a lien and duly records it in every county in which any portion of the cooperative is located is to be treated upon termination as if the creditor had perfected a lien against each unit owner's interest immediately before termination or when the lien is obtained and recorded, whichever is later;

(c) The amount of the lien of an association's creditor described in paragraphs (a) and (b) of this subsection (9) against each unit owner's interest must be proportionate to the ratio which each unit's common expense liability bears to the common expense liability of all of the units;

(d) The lien of each creditor of each unit owner which was perfected before termination continues as a lien against that unit owner's unit as of the date the lien was perfected; and

(e) The assets of the association must be distributed to all unit owners and all lienholders as their interests may appear in the order described above. Creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

(10) The respective interests of unit owners referred to in subsections (5) to (9) of this section are as follows:

(a) Except as provided in paragraph (b) of this subsection (10), the respective interests of unit owners are the combined fair market values of their units, allocated interests, any limited common elements, and, in the case of a planned community, any tenant in common interest, immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within thirty days after distribution by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all unit owners are:

(I) In a condominium, their respective common element interests immediately before the termination;

(II) In a cooperative, their respective ownership interests immediately before the termination; and

(III) In a planned community, their respective common expense liabilities immediately before the termination.

(11) In a condominium or planned community, except as provided in subsection (12) of this section, foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community. Foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community other than withdrawable real estate does not withdraw that portion from the common interest

community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment to the declaration excluding the real estate from the common interest community prepared, executed, and recorded by the association.

(12) In a condominium or planned community, if a lien or encumbrance against a portion of the real estate comprising the common interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common interest community. The board of directors shall reallocate interests as if the foreclosed section were taken by eminent domain by an amendment to the declaration prepared, executed, and recorded by the association.

§ 38-33.3-219, C.R.S. Rights of secured lenders.

(1) The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to:

(a) Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board; or

(b) Prevent the association or the executive board from commencing, intervening in, or settling any solicitation or proceeding; or

(c) Prevent any insurance trustee or the association from receiving and distributing any insurance proceeds pursuant to section 38-33.3-313.

§ 38-33.3-220, C.R.S. Master associations.

(1) If the declaration provides that any of the powers of a unit owners' association described in section 38-33.3-302 are to be exercised by or may be delegated to a master association, all provisions of this article applicable to unit owners' associations apply to any such master association except as modified by this section.

(2) Unless it is acting in the capacity of an association described in section 38-33.3-301, a master association may exercise the powers set forth in section 38-33.3-302 (1) (b) only to the extent such powers are expressly permitted to be exercised by a master association in the declarations of common interest communities which are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

(3) If the declaration of any common interest community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 38-33.3-303, 38-33.3-308, 38-33.3-309, 38-33.3-310, and 38-33.3-312 apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this article.

(5) Even if a master association is also an association described in section 38-33.3-301, the articles of incorporation and the declaration of each common interest community, the powers of which are assigned by the declaration or delegated to the master association, must provide that the

executive board of the master association be elected after the period of declarant control, if any, in one of the following ways:

(a) All unit owners of all common interest communities subject to the master association may elect all members of the master association's executive board.

(b) All members of the executive boards of all common interest communities subject to the master association may elect all members of the master association's executive board.

(c) All unit owners of each common interest community subject to the master association may elect specified members of the master association's executive board.

(d) All members of the executive board of each common interest community subject to the master association may elect specified members of the master association's executive board.

§ 38-33.3-221, C.R.S. Merger or consolidation of common interest communities.

(1) Any two or more common interest communities of the same form of ownership, by agreement of the unit owners as provided in subsection (2) of this section, may be merged or consolidated into a single common interest community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant common interest community is the legal successor, for all purposes, of all of the preexisting common interest communities, and the operations and activities of all associations of the preexisting common interest communities are merged or consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(2) An agreement of two or more common interest communities to merge or consolidate pursuant to subsection (1) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting common interest communities following approval by owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. The agreement must be recorded in every county in which a portion of the common interest community is located and is not effective until recorded.

(3) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant common interest community either by stating the reallocations or the formulas upon which they are based.

§ 38-33.3-221.5, C.R.S. 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.

§ 38-33.3-222, C.R.S. Addition of unspecified real estate.

In a common interest community, if the right is originally reserved in the declaration, the declarant, in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration to add additional real estate to the common interest community without describing the location of that real estate in the original declaration; but the area of real estate added to the common interest community pursuant to this section may not exceed ten percent of the total area of real estate described in section 38-33.3-205 (1) (c) and (1) (h), and the declarant may not in any event increase the number of units in the common interest community beyond the number stated in the original declaration pursuant to section 38-33.3-205 (1) (d), except as provided in section 38-33.3-217 (4).

§ 38-33.3-223, C.R.S. Sale of unit – disclosure to buyer. (Repealed)

§ 38-33.3-301, C.R.S. 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, C.R.S. 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; except that, in regulating the use of common elements by unit owners, the association shall comply with section 38-33.3-302.5, including during the maintenance, repair, replacement, or modification of a common element;

(g) Cause additional improvements to be made as a part of the common elements;

(h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, subject to the following exceptions:

(I) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to section 38-33.3-312; and

(II) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to section 38-33.3-312;

(i) Grant easements, leases, licenses, and concessions through or over the common elements;

(j) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in section 38-33.3-202 (1) (b) and (1) (d);

(k) (I) 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.

(II) The association may not levy fines against a unit owner for violations of declarations, bylaws, or rules of the association for failure to adequately water landscapes or vegetation for which the unit owner is responsible when water restrictions or guidelines from the local water district or similar entity are in place and the unit owner is watering in compliance with such restrictions or guidelines. The association may require proof from the unit owner that the unit owner is watering the landscape or vegetation in a manner that is consistent with the maximum watering permitted by the restrictions or guidelines then in effect.

(l) Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments;

(m) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

(o) Exercise any other powers conferred by the declaration or bylaws;

(p) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and

(q) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(3) (a) Any managing agent, employee, independent contractor, or other person acting on behalf of the association shall be subject to this article to the same extent as the association itself would be.

(b) Decisions concerning the approval or denial of a unit owner's application for architectural or landscaping changes shall be made in accordance with standards and

procedures set forth in the declaration or in duly adopted rules and regulations or bylaws of the association, and shall not be made arbitrarily or capriciously.

(4) (a) The association's contract with a managing agent shall be terminable for cause without penalty to the association. Any such contract shall be subject to renegotiation.

(b) Notwithstanding section 38-33.3-117 (1.5) (g), this subsection (4) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

§ 38-33.3-302.5, C.R.S. Unit owners' access to common elements – duties of association – unreasonable restrictions and prohibitions prohibited – notice of restriction or prohibition required.

(1) In regulating the use of common elements, as permitted by section 38-33.3-302 (1)(f), an association shall preserve and protect unit owners' ability to use and enjoy common elements and shall not unreasonably restrict or prohibit unit owners' access to, or enjoyment of, any common element, including during the maintenance, repair, replacement, or modification of a common element.

(2) During maintenance, repair, replacement, or modification of a common element, an association may restrict or prohibit unit owners' access to, and enjoyment of, the common element only to the extent and for the length of time necessary to:

(a) Protect the safety of any individuals, including unit owners and individuals performing the maintenance, repair, replacement, or modification of the common element; or

(b) Preserve the structural integrity or condition of a repair, replacement, or modification.

(3) If an association must restrict or prohibit unit owners' access to one or more common elements of the common interest community for more than seventy-two hours, the association shall:

(a) Provide an electronic or written notice to each unit owner, which notice is provided as soon as reasonably possible and includes:

(I) A simple explanation of the reason for the restriction or prohibition;

(II) An indication of the estimated time or date upon which the restriction or prohibition will no longer exist; and

(III) A telephone number or e-mail address whereby a unit owner may pose questions or concerns about the restriction or prohibition for the consideration of the association; and

(b) Post a visible, clearly legible notice at each physical access point to the common element, which notice remains posted for the duration of the restriction or prohibition and includes the elements described in subsection (3)(a) of this section.

§ 38-33.3-303, C.R.S. Executive board members and officers – powers and duties – reserve funds – reserve study – audit.

(1) (a) Except as provided in the declaration, the bylaws, or subsection (3) of this section or any other provisions of this article, the executive board may act in all instances on behalf of the association.

(b) Notwithstanding any provision of the declaration or bylaws to the contrary, all members of the executive board shall have available to them all information related to the responsibilities and operation of the association obtained by any other member of the executive board. This information shall include, but is not necessarily limited to, reports of detailed monthly expenditures, contracts to which the association is a party, and copies of communications, reports, and opinions to and from any member of the executive board or any managing agent, attorney, or accountant employed or engaged by the executive board to whom the executive board delegates responsibilities under this article.

(2) Except as otherwise provided in subsection (2.5) of this section:

(a) If appointed by the declarant, in the performance of their duties, the officers and members of the executive board are required to exercise the care required of fiduciaries of the unit owners.

(b) If not appointed by the declarant, no member of the executive board and no officer shall be liable for actions taken or omissions made in the performance of such member's duties except for wanton and willful acts or omissions.

(2.5) With regard to the investment of reserve funds of the association, the officers and members of the executive board shall be subject to the standards set forth in section 7-128-401, C.R.S.; except that, as used in that section:

(a) "Corporation" or "nonprofit corporation" means the association.

(b) "Director" means a member of the association's executive board.

(c) "Officer" means any person designated as an officer of the association and any person to whom the executive board delegates responsibilities under this article, including, without limitation, a managing agent, attorney, or accountant employed by the executive board.

(3) (a) The executive board may not act on behalf of the association to amend the declaration, to terminate the common interest community, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

(b) Committees of the association shall be appointed pursuant to the governing documents of the association or, if the governing documents contain no applicable provisions, pursuant to section 7-128-206, C.R.S. The person appointed after August 15, 2009, to preside over any such committee shall meet the same qualifications as are required by the governing documents of the association for election or appointment to the executive board of the association.

(4) (a) (I) Within ninety days after adoption of a proposed budget for the common interest community, the executive board shall mail, by first-class mail, or otherwise deliver, including posting the proposed budget on the association's website, a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider the budget. The meeting must occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the bylaws. The executive board shall give notice to the unit owners of the meeting as allowed for in the bylaws.

(II) (A) Unless the declaration requires otherwise, the budget proposed by the executive board does not require approval from the unit owners and it will be deemed approved by the unit owners in the absence of a veto at the noticed meeting by a majority of all unit owners, or if permitted in the declaration, a majority of a class of unit owners, or any larger percentage specified in the declaration, whether or not a quorum is present. If the proposed budget is vetoed, the periodic budget last proposed by the executive board and not vetoed by the unit owners must be continued until a subsequent budget proposed by the executive board is not vetoed by the unit owners.

(B) This subsection (4)(a)(II) shall not apply to any common interest community formed prior to July 1, 1992, if the declaration sets a maximum assessment amount or limits the increase in an annual budget to a specific amount and the budget proposed by the executive board does not exceed the maximum amount or limits set in the declaration.

(b) (I) At the discretion of the executive board or upon request pursuant to subparagraph (II) or (III) of this paragraph (b) as applicable, the books and records of the association shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified person selected by the board. Such person need not be a certified public accountant except in the case of an audit. A person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall cover the association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

(II) An audit shall be required under this paragraph (b) only when both of the following conditions are met:

(A) The association has annual revenues or expenditures of at least two hundred fifty thousand dollars; and

(B) An audit is requested by the owners of at least one-third of the units represented by the association.

(III) A review shall be required under this paragraph (b) only when requested by the owners of at least one-third of the units represented by the association.

(IV) Copies of an audit or review under this paragraph (b) shall be made available upon request to any unit owner beginning no later than thirty days after its completion.

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

(5) (a) Subject to subsection (6) of this section:

(I) The declaration, except a declaration for a large planned community, may provide for a period of declarant control of the association, during which period a declarant, or persons designated by such declarant, may appoint and remove the officers and members of the executive board. Regardless of the period of declarant control provided in the declaration, a period of declarant control terminates no later than the earlier of sixty days after conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant, two years after the last conveyance of a unit by the declarant in the ordinary course of business, or two years after any right to add new units was last exercised.

(II) The declaration for a large planned community may provide for a period of declarant control of the association during which period a declarant, or persons designated by such declarant, may appoint and remove the officers and members of the executive board. Regardless of the period of declarant control provided in the declaration, a period of declarant control terminates in a large planned community no later than the earlier of sixty days after conveyance of seventy-five percent of the maximum number of units that may be created under zoning or other governmental development approvals in effect for the large planned community at any given time to unit owners other than a declarant, six years after the last conveyance of a unit by the declarant in the ordinary course of business, or twenty years after recordation of the declaration.

(b) A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of the period of declarant control, but, in that event, the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a

recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(c) If a period of declarant control is to terminate in a large planned community pursuant to subparagraph (II) of paragraph (a) of this subsection (5), the declarant, or persons designated by the declarant, shall no longer have the right to appoint and remove the officers and members of the executive board unless, prior to the termination date, the association approves an extension of the declarant's ability to appoint and remove no more than a majority of the executive board by vote of a majority of the votes entitled to be cast in person or by proxy, other than by the declarant, at a meeting duly convened as required by law. Any such approval by the association may contain conditions and limitations. Such extension of declarant's appointment and removal power, together with any conditions and limitations approved as provided in this paragraph (c), shall be included in an amendment to the declaration previously executed by the declarant.

(6) Not later than sixty days after conveyance of twenty-five percent of the units that may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the executive board must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units that may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the executive board must be elected by unit owners other than the declarant.

(7) Except as otherwise provided in section 38-33.3-220 (5), not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners other than the declarant or designated representatives of unit owners other than the declarant. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(8) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a vote of sixty-seven percent of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant or a member elected pursuant to a class vote under section 38-33.3-207 (4).

(9) Within sixty days after the unit owners other than the declarant elect a majority of the members of the executive board, the declarant shall deliver to the association all property of the unit owners and of the association held by or controlled by the declarant, including without limitation the following items:

(a) The original or a certified copy of the recorded declaration as amended, the association's articles of incorporation, if the association is incorporated, bylaws, minute books, other books and records, and any rules and regulations which may have been promulgated;

(b) An accounting for association funds and financial statements, from the date the association received funds and ending on the date the period of declarant control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the association.

(c) The association funds or control thereof;

(d) All of the declarant's tangible personal property that has been represented by the declarant to be the property of the association or all of the declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the common elements, and inventories of these properties;

(e) A copy, for the nonexclusive use by the association, of any plans and specifications used in the construction of the improvements in the common interest community;

(f) All insurance policies then in force, in which the unit owners, the association, or its directors and officers are named as insured persons;

(g) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the common interest community;

(h) Any other permits issued by governmental bodies applicable to the common interest community and which are currently in force or which were issued within one year prior to the date on which unit owners other than the declarant took control of the association;

(i) Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;

(j) A roster of unit owners and mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records;

(k) Employment contracts in which the association is a contracting party;

(*l*) Any service contract in which the association is a contracting party or in which the association or the unit owners have any obligation to pay a fee to the persons performing the services; and

(m) For large planned communities, copies of all recorded deeds and all recorded and unrecorded leases evidencing ownership or leasehold rights of the large planned community unit owners' association in all common elements within the large planned community.

§ 38-33.3-303.5, C.R.S. Construction defect actions – disclosure – approval by unit owners – definitions – exemptions.

(1) (a) Before the executive board, pursuant to section 38-33.3-302 (1)(d), institutes a construction defect action, the executive board shall comply with this section.

(b) For the purposes of this section only:

(I) "Construction defect action":

(A) Means any civil action or arbitration proceeding for damages, indemnity, subrogation, or contribution brought against a construction professional to assert a claim, counterclaim, cross-claim, or third-party claim for damages or loss to, or the loss of use of, real or personal property or personal injury caused by a defect in the design or construction of an improvement to real property, regardless of the theory of liability; and

(B) Includes any related, ancillary, or derivative claim, and any claim for breach of fiduciary duty or an act or omission of a member of an association's executive board, that arises from an alleged construction defect or that seeks the same or similar damages.

(II) "Construction professional" has the meaning set forth in section 13-20-802.5 (4).

(c) **Meeting to consider commencement of construction defect action – disclosures – required terms.**

(I) The executive board shall mail or deliver written notice of the anticipated commencement of the construction defect action to each unit owner at the owner's last-known address described in the association's records and to the last-known address of each construction professional against whom a construction defect action is proposed; except that this notice requirement does not apply to:

(A) Construction professionals identified after the notice is mailed; or

(B) Joined parties in a construction defect action previously approved by owners pursuant to subsection (1)(d) of this section.

(II) The notice given pursuant to this subsection (1)(c) must call a meeting of the unit owners, which must be held no less than ten days and no more than fifteen days after the mailing date of the notice, to consider whether to bring a construction defect action. A failure to hold the meeting within this time period voids the subsequent vote. A quorum is not required at the meeting. In no event shall the time period for providing the notice required pursuant to subsection (1)(c)(I) of this section, holding the meeting required pursuant to this subsection (1)(c)(II), and voting as required by subsection (1)(d) of this section exceed ninety days. The notice must state that:

(A) The conclusion of the meeting initiates the voting period, during which the association will accept votes for and against proceeding with the construction defect action. The disclosure and voting period shall end ninety days after the mailing date of the meeting notice or when the association determines that the construction defect action is either approved or disapproved, whichever occurs first.

(B) The construction professional against whom the construction defect action is proposed will be invited to attend and will have an opportunity to address the unit owners concerning the alleged construction defect; and

(C) The presentation at the meeting by the construction professional or the construction professional's designee or designees may, but is not required to, include an offer to remedy any defect in accordance with section 13-20-803.5 (3) of the "Construction Defect Action Reform Act".

(III) The notice given pursuant to this subsection (1)(c) must also contain a description of the nature of the construction defect action, which description identifies alleged defects with reasonable specificity, the relief sought, a good-faith estimate of the benefits and risks involved, and any other pertinent information. The notice shall also include the following disclosures:

1. The alleged construction defects might result in increased costs to the association in maintenance or repair or cause an increase in assessments or special assessments to cover the cost of repairs.
2. If the association does not file a claim before the applicable legal deadlines, the claim will expire.
3. Until the alleged defects are repaired, sellers of units within the common interest community might owe unit buyers a duty to disclose known defects.
4. The executive board (intends to enter) (has entered) into a fee arrangement with the attorneys representing the association, under which (the attorneys will be paid a contingency fee equal to _____ percent of the (net) (gross) recovery of the amount the association recovers from the defendant(s)) (the association's attorneys will be paid (an hourly fee of $_____) (a fixed fee of $_____)).
5. In addition to attorney fees, the association may incur up to $_____ for legal costs, including expert witnesses, depositions, and filing fees. The amount will not be exceeded without the executive board's further written authority. If the association does not prevail on its claim, the association may be responsible for paying these legal expenses.
6. If the association does not prevail on its claim, the association may be responsible for paying its attorney fees.

7. If the association does not prevail on its claim, a court or arbitrator sometimes awards costs and attorney fees to the opposing party. Should that happen in this case, the association may be responsible for paying the opposing party's costs and fees as a result of such award.

8. There is no guarantee that the association will recover enough funds to repair the claimed construction defect(s). If the claimed defects are not repaired, additional damage to property and a reduction in the useful life of the common elements might occur.

9. Until the claimed construction defects are repaired, or until the construction defect claim is concluded, the market value of the units in the association might be adversely affected.

10. Until the claimed construction defect(s) are repaired, or until the construction defect(s) claim is concluded, owners in the association might have difficulty refinancing and prospective buyers might have difficulty obtaining financing. In addition, certain federal underwriting standards or regulations prevent refinancing or obtaining a new loan in projects where a construction defect is claimed, and certain lenders as a matter of policy will not refinance or provide a new loan in projects where a construction defect is claimed.

(IV) The association shall maintain a verified owner mailing list that identifies the owners to whom the association mailed the notice required pursuant to this subsection (1)(c). The verified owner mailing list shall include, for each owner, the address, if any, to which the association mailed the notice required pursuant to this subsection (1)(c). The association shall provide a copy of the verified owner mailing list to each construction professional who is sent a notice pursuant to this subsection (1)(c) at the owner meeting required under subsection (1)(c)(II) of this section. The owner mailing list shall be deemed verified if a specimen copy of the mailing list is certified by an association officer or agent. If the association commences a construction defect action against any construction professional, the association shall file its verified owner mailing list and records of votes received from owners during the voting period with the appropriate forum under seal.

(V) The substance of a proposed construction defect action may be amended or supplemented after the meeting, but an amended or supplemented claim does not extend the voting period. The executive board shall give notice to unit owners of any amended or supplemented claim and shall maintain records of its communications with unit owners. Owner approval pursuant to subsection (1)(d) of this section is not required for amendments or supplements to a construction defect action made after the notice pursuant to this subsection (1)(c) is sent.

(d) **Approval by unit owners – procedures.**

* (I) (A) Notwithstanding any provision of law or any requirement in the governing documents, the executive board has the right to initiate a construction defect action if authorized within the voting period by owners of units to which at least sixty-five percent of votes in the association are allocated. The approval is not required for an association to proceed with a construction defect action if the alleged construction defect pertains to a facility that is intended and used for nonresidential purposes and if the cost to repair the alleged defect does not exceed fifty thousand dollars. The approval is not required for an association to proceed with a construction defect action when the association is the contracting party for the performance of labor or purchase of services or materials.

(B) Notwithstanding any other provision of law, an owner's vote shall be submitted only once and may be obtained in any written format confirming the owner's vote to approve or reject the proposed construction defect action. The association shall maintain a record of all votes until the conclusion of the construction defect action, including all appeals, if any.

(II) (A) Nothing in this section alters the tolling provisions of section 13-20-805.

(B) All statutes of limitation and repose applicable to claims based on defects described with reasonable specificity in the notice, which may be supplemented or amended pursuant to subsection (1)(c)(IV) of this section, are tolled from the date the notice sent pursuant to subsection (1)(c) of this section is mailed until either the ninety-day voting and disclosure period ends or until the association determines that the construction defect action is either approved or disapproved, whichever occurs first.

(C) The applicable statutes of limitation and repose that apply to claims based on a defect described in the notice with reasonable specificity are tolled pursuant to this subsection (1)(d)(II) once, and may not extend the statutes of limitation and repose that apply to claims based on that defect for more than a total of ninety days, respectively. If a defect not included in the notice sent pursuant to subsection (1)(c) of this section is the subject of a later vote, tolling pursuant to this subsection (1)(d) applies unless the claim based on that defect is otherwise barred by the statute of limitations or statute of repose.

* (III) **Vote count – exclusions**. For purposes of calculating the required vote under this subsection (1)(d) only, the following votes are excluded:

(A) Any votes allocated to units owned by a development party. As used in this subsection (1)(d)(III)(A), "development party" means a contractor, subcontractor, developer, or builder responsible for any part of the design, construction, or repair of any portion of the common interest community and any of that party's affiliates; and "affiliate" includes an entity controlled or owned, in whole or in part, by any person that controls or owns a development party or by the spouse of a development party.

(B) Any votes allocated to units owned by banking institutions, unless a vote from such an institution is actually received by the association;

(C) Any votes allocated to units of a product type in which no defects are alleged, in a common interest community whose declaration provides that common expense liabilities are not shared between the product types;

(D) Any votes allocated to units owned by owners who are deemed nonresponsive. If the status of the nonresponsive unit owners is challenged in court, the court shall consider whether the executive board has made diligent efforts to contact the unit owner regarding the vote and may consider: Whether a mailing was returned as undeliverable; whether the owner appears to be residing at the unit; and whether the association has used other contact information, such as an electronic mail address or telephone number for the owner.

(e) **Notice to construction professional.** At least five business days before the mailing of the notice required by subsection (1)(c) of this section, the association shall notify each construction professional against whom a construction defect action is proposed by mail, at its last-known address, of the date and time of the meeting called to consider the construction defect action pursuant to subsection (1)(c) of this section.

(2) Repealed.

(3) Nothing in this section shall be construed to:

(a) Require the disclosure in the notice or the disclosure to a unit owner of attorney-client communications or other privileged communications;

(b) Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or

(c) Limit or impair the authority of the executive board to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.

(4) **Provisions not severable.** Notwithstanding section 2-4-204, the general assembly finds, determines, and declares that if any provision of this section or its application to any person or circumstance is held invalid, the entire section shall be deemed invalid.

* (5) An executive board that is successful under a construction defect claim or settlement shall first use net monetary damages or net proceeds received pursuant to the claim to repair the construction defect.

§ 38-33.3-304, C.R.S. Transfer of special declarant rights.

(1) A special declarant right created or reserved under this article may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the common interest community is located. The instrument is not effective unless executed by the transferee.

(2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon such transferor by this article. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to the common interest community.

(c) If a transferor retains any special declarant rights but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this article or by the declaration relating to the retained special declarant rights and arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy or receivership proceedings of any units owned by a declarant or real estate in a common interest community subject to development rights, a person acquiring title to all the property being foreclosed or sold succeeds to only those special declarant rights related to that property held by that declarant which are specified in a written instrument prepared, executed, and recorded by such person at or about the same time as the judgment or instrument or by which such person obtained title to all of the property being foreclosed or sold.

(4) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy act or receivership proceedings of all interests in a common interest community owned by a declarant:

(a) The declarant ceases to have any special declarant rights; and

(b) The period of declarant control terminates unless the instrument which is required by subsection (3) of this section to be prepared, executed, and recorded at or about the same time as the judgment or instrument conveying title provides for transfer of all special declarant rights to a successor declarant.

(5) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on any declarant by this article or by the declaration.

(b) A successor to any special declarant right, other than a successor described in paragraph (c) or (d) of this subsection (5) or a successor who is an affiliate of a declarant, is subject to all obligations and liabilities imposed by this article or the declaration:

(I) On a declarant which relate to the successor's exercise or nonexercise of special declarant rights; or

(II) On the declarant's transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant or made before the common interest community was created;

(C) Breach of any fiduciary obligation by any previous declarant or such declarant's appointees to the executive board; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, if such successor is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant.

(d) A successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to the instrument prepared, executed, and recorded by such person pursuant to the provisions of subsection (3) of this section may declare such successor's intention in such recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than the right held by such successor's transferor to control the executive board in accordance with the provisions of section 38-33.3-303 (5) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection (5), such successor declarant is not subject to any liability or obligation as a declarant, other than liability for the successor's acts and omissions under section 38-33.3-303 (4).

(6) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this article or the declaration.

§ 38-33.3-305, C.R.S. Termination of contracts and leases of declarant.

(1) The following contracts and leases, if entered into before the executive board elected by the unit owners pursuant to section 38-33.3-303 (7) takes office, may be terminated without penalty by the association, at any time after the executive board elected by the unit owners pursuant to section 38-33.3-303 (7) takes office, upon not less than ninety days' notice to the other party:

(a) Any management contract, employment contract, or lease of recreational or parking areas or facilities;

(b) Any other contract or lease between the association and a declarant or an affiliate of a declarant; or

(c) Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing.

(2) Subsection (1) of this section does not apply to any lease the termination of which would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section or a proprietary lease.

§ 38-33.3-306, C.R.S. Bylaws.

(1) In addition to complying with applicable sections, if any, of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., or the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., if the common interest community is organized pursuant thereto, the bylaws of the association must provide:

(a) The number of members of the executive board and the titles of the officers of the association;

(b) Election by the executive board of a president, a treasurer, a secretary, and any other officers of the association the bylaws specify;

(c) The qualifications, powers and duties, and terms of office of, and manner of electing and removing, executive board members and officers and the manner of filling vacancies;

(d) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(e) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(f) A method for amending the bylaws.

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(3) (a) If an association with thirty or more units delegates powers of the executive board or officers relating to collection, deposit, transfer, or disbursement of association funds to other persons or to a managing agent, the bylaws of the association shall require the following:

(I) That the other persons or managing agent maintain fidelity insurance coverage or a bond in an amount not less than fifty thousand dollars or such higher amount as the executive board may require;

(II) That the other persons or managing agent maintain all funds and accounts of the association separate from the funds and accounts of other associations managed by the other persons or managing agent and maintain all reserve accounts of each association so managed separate from operational accounts of the association;

(III) That an annual accounting for association funds and a financial statement be prepared and presented to the association by the managing agent, a public accountant, or a certified public accountant.

(b) Repealed.

§ 38-33.3-307, C.R.S. Upkeep of the common interest community.

(1) Except to the extent provided by the declaration, subsection (2) of this section, or section 38-33.3-313 (9), the association is responsible for maintenance, repair, and replacement of the

common elements, and each unit owner is responsible for maintenance, repair, and replacement of such owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through such owner's unit reasonably necessary for those purposes. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or expense to avoid damage, or the association if it is responsible, is liable for the cost of prompt repair.

(1.5) Maintenance, repair, or replacement of any drainage structure or facilities, or other public improvements required by the local governmental entity as a condition of development of the common interest community or any part thereof shall be the responsibility of the association, unless such improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair, or replacement or unless such maintenance, repair, or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity.

(2) In addition to the liability that a declarant as a unit owner has under this article, the declarant alone is liable for all expenses in connection with real estate within the common interest community subject to development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant. If the declarant fails to pay all expenses in connection with real estate within the common interest community subject to development rights, the association may pay such expenses, and such expenses shall be assessed as a common expense against the real estate subject to development rights, and the association may enforce the assessment pursuant to section 38-33.3-316 by treating such real estate as if it were a unit. If the association acquires title to the real estate subject to the development rights through foreclosure or otherwise, the development rights shall not be extinguished thereby, and, thereafter, the association may succeed to any special declarant rights specified in a written instrument prepared, executed, and recorded by the association in accordance with the requirements of section 38-33.3-304 (3).

(3) In a planned community, if all development rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

(4) In maintaining, repairing, or replacing common elements as required by subsection (1) of this section, an association shall comply with section 38-33.3-302.5 concerning unit owners' access to common elements.

§ 38-33.3-308, C.R.S. 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, including a disciplinary hearing regarding a unit owner and any referral of delinquency; except that a unit owner who is the subject of a disciplinary hearing or a referral of delinquency may request and receive the results of any vote taken at the relevant meeting;

(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.

§ 38-33.3-309, C.R.S. Quorums.

(1) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent, or, in the case of an association with over one thousand unit owners, ten percent, of the votes which may be cast for election of the executive board are present, in person or by proxy at the beginning of the meeting.

(2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting or grant their proxy, as provided in section 7-128-205 (4), C.R.S.

§ 38-33.3-310, C.R.S. 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 a 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 the proxy itself indicates an earlier termination date.

(c) The association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the unit owner.

(d) The association and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.

(e) Any action of the association based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

(3) (a) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units:

(I) The provisions of subsections (1) and (2) of this section apply to lessees as if they were unit owners;

(II) Unit owners who have leased their units to other persons may not cast votes on those specified matters; and

(III) Lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners.

(b) Unit owners must also be given notice, in the manner provided in section 38-33.3-308, of all meetings at which lessees are entitled to vote.

(4) No votes allocated to a unit owned by the association may be cast.

§ 38-33.3-310.5, C.R.S. 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.

§ 38-33.3-311, C.R.S. Tort and contract liability.

(1) Neither the association nor any unit owner except the declarant is liable for any cause of action based upon that declarant's acts or omissions in connection with any part of the common

interest community which that declarant has the responsibility to maintain. Otherwise, any action alleging an act or omission by the association must be brought against the association and not against any unit owner. If the act or omission occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for all tort losses not covered by insurance suffered by the association or that unit owner and all costs that the association would not have incurred but for such act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section by being a unit owner or a member or officer of the association.

(2) The declarant is liable to the association for all funds of the association collected during the period of declarant control which were not properly expended.

§ 38-33.3-312, C.R.S. Conveyance or encumbrance of common elements.

(1) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; except that all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(2) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; except that, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made in compliance with section 38-33.3-218, is void.

(3) An agreement to convey, or subject to a security interest, common elements in a condominium or planned community, or, in a cooperative, an agreement to convey, or subject to a security interest, any part of a cooperative, must be evidenced by the execution of an agreement, in the same manner as a deed, by the association. The agreement must specify a date after which the agreement will be void unless approved by the requisite percentage of owners. Any grant, conveyance, or deed executed by the association must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(4) The association, on behalf of the unit owners, may contract to convey an interest in a common interest community pursuant to subsection (1) of this section, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section and executed and ratified pursuant to subsection (3) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(5) Unless in compliance with this section, any purported conveyance, encumbrance, judicial sale, or other transfer of common elements or any other part of a cooperative is void.

(6) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of ingress and egress of the unit and support of the unit.

(7) Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

(8) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section.

§ 38-33.3-313, C.R.S. Insurance.

(1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the common elements and, in a planned community, also on property that must become common elements, for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements, and, in cooperatives, also of all units, in an amount, if any, specified by the common interest community instruments or otherwise deemed sufficient in the judgment of the executive board but not less than any amount specified in the association documents, insuring the executive board, the unit owners' association, the management agent, and their respective employees, agents, and all persons acting as agents. The declarant shall be included as an additional insured in such declarant's capacity as a unit owner and board member. The unit owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements and, in cooperatives, also of all units. The insurance shall cover claims of one or more insured parties against other insured parties.

(2) In the case of a building that is part of a cooperative or that contains units having horizontal boundaries described in the declaration, the insurance maintained under paragraph (a) of subsection (1) of this section must include the units but not the finished interior surfaces of the walls, floors, and ceilings of the units. The insurance need not include improvements and betterments installed by unit owners, but if they are covered, any increased charge shall be assessed by the association to those owners.

(3) If the insurance described in subsections (1) and (2) of this section is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it considers appropriate, including insurance on units it is not obligated to insure, to protect the association or the unit owners.

(4) Insurance policies carried pursuant to subsections (1) and (2) of this section must provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of such unit owner's interest in the common elements or membership in the association;

(b) The insurer waives its rights to subrogation under the policy against any unit owner or member of his household;

(c) No act or omission by any unit owner, unless acting within the scope of such unit owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(5) Any loss covered by the property insurance policy described in paragraph (a) of subsection (1) and subsection (2) of this section must be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for the association unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (9) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association, unit owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the common interest community is terminated.

(6) The association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the association settles claims for damages to real property, it shall have the authority to assess negligent unit owners causing such loss or benefiting from such repair or restoration all deductibles paid by the association. In the event that more than one unit is damaged by a loss, the association in its reasonable discretion may assess each unit owner a pro rata share of any deductible paid by the association.

(7) An insurance policy issued to the association does not obviate the need for unit owners to obtain insurance for their own benefit.

(8) An insurer that has issued an insurance policy for the insurance described in subsections (1) and (2) of this section shall issue certificates or memoranda of insurance to the association and, upon request, to any unit owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the association, and each unit owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

(9) (a) Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the association unless:

(I) The common interest community is terminated, in which case section 38-33.3-218 applies;

(II) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

(III) Sixty-seven percent of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild; or

(IV) Prior to the conveyance of any unit to a person other than the declarant, the holder of a deed of trust or mortgage on the damaged portion of the common interest community rightfully demands all or a substantial part of the insurance proceeds.

(b) The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced, the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and, except to the extent that other persons will be distributees, the

insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, as follows:

(I) In a condominium, in proportion to the common element interests of all the units; and

(II) In a cooperative or planned community, in proportion to the common expense liabilities of all the units; except that, in a fixed or limited equity cooperative, the unit owner may not receive more of the proceeds than would satisfy the unit owner's entitlements under the declaration if the unit owner leaves the cooperative. In such a cooperative, the proceeds that remain after satisfying the unit owner's obligations continue to be held in trust by the association for the benefit of the cooperative. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under section 38-33.3-107, and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

(10) If any unit owner or employee of an association with thirty or more units controls or disburses funds of the common interest community, the association must obtain and maintain, to the extent reasonably available, fidelity insurance. Coverage shall not be less in aggregate than two months' current assessments plus reserves, as calculated from the current budget of the association.

(11) Any person employed as an independent contractor by an association with thirty or more units for the purposes of managing a common interest community must obtain and maintain fidelity insurance in an amount not less than the amount specified in subsection (10) of this section, unless the association names such person as an insured employee in a contract of fidelity insurance, pursuant to subsection (10) of this section.

(12) The association may carry fidelity insurance in amounts greater than required in subsection (10) of this section and may require any independent contractor employed for the purposes of managing a common interest community to carry more fidelity insurance coverage than required in subsection (10) of this section.

(13) Premiums for insurance that the association acquires and other expenses connected with acquiring such insurance are common expenses.

§ 38-33.3-314, C.R.S. Surplus funds.

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of or provision for reserves shall be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

§ 38-33.3-315, C.R.S. Assessments for common expenses.

(1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the association.

(2) Except for assessments under subsections (3) and (4) of this section and section 38-33.3-207 (4)(a)(IV), all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section 38-33.3-207 (1) and (2). Any past-due common expense assessment or installment of a common expense assessment bears interest at the rate established by the association in an amount not to exceed eight percent per year.

(3) To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited; and

(c) The costs of insurance shall be assessed in proportion to risk, and the costs of utilities shall be assessed in proportion to usage.

(4) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against such owner's unit.

(5) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(6) Each unit owner is liable for assessments made against such owner's unit during the period of ownership of such unit. No unit owner may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit against which the assessments are made.

(7) Unless otherwise specifically provided in the declaration or bylaws, the association may enter into an escrow agreement with the holder of a unit owner's mortgage so that assessments may be combined with the unit owner's mortgage payments and paid at the same time and in the same manner; except that any such escrow agreement shall comply with any applicable rules of the federal housing administration, department of housing and urban development, veterans' administration, or other government agency.

§ 38-33.3-316, C.R.S. Lien for assessments – liens for fines, fees, charges, costs, and attorney fees – limitations.

(1) (a) 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. Fees, charges, late charges, attorney fees up to the maximum amount authorized under subsection (7) of this section, 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) may be subject to a statutory lien but are not subject to a foreclosure action under this article 33.3.

(b) If an assessment is payable in installments, each installment may be subject to a statutory lien if the unit owner fails to pay the installment within fifteen days after the installment becomes due, but the association may not pursue legal action for unpaid monthly installments until the unit owner has failed to pay at least three monthly installments pursuant to section 38-33.3-209.5 (7)(a)(III)(B).

(2) (a) A lien under this section is prior to all other liens and encumbrances on a unit except:

(I) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to;

(II) A security interest on the unit which has priority over all other security interests on the unit and which was recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, a security interest encumbering only the unit owner's interest which has priority over all other security interests on the unit and which was perfected before the date on which the assessment sought to be enforced became delinquent; and

(III) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(b) Subject to paragraph (d) of this subsection (2), a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of:

(I) An amount equal to the common expense assessments based on a periodic budget adopted by the association under section 38-33.3-315 (1) which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

(II) (Deleted by amendment, L. 93, p. 653, §21, effective April 30, 1993.)

(c) This subsection (2) does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. A lien under this section is not subject to the provisions of part 2 of article 41 of this title or to the provisions of section 15-11-202, C.R.S.

(d) A lien described in subsection (1) of this section has 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) (a) (I) The association is entitled to costs and reasonable attorney fees that the association incurs in any action or suit for a judgment or decree brought by the association under this section.

(II) A court shall determine reasonable attorney fees in accordance with rule 121 sec. 1-22 of the Colorado rules of civil procedure.

(b) An association is not entitled to recover attorney fees under subsection (7)(a) of this section for attorney fees incurred before the association has complied with the notice requirements of section 38-33.3-209.5 (1.7)(a) with regard to any matter for which the association is required to comply with the notice requirements of section 38-33.3-209.5 (1.7)(a).

(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.

* (10.3) At least thirty days before initiating a legal action to foreclose an association lien, the association shall provide written and electronic notice to the unit owner or the unit owner's designee that:

* (a) The unit owner has the right to participate in credit counseling at the unit owner's expense and that information relating to obtaining credit counseling and the consequences of foreclosure by an association is available through the HOA information and resource center created in section 12-10-801 (1) or through a link to the federal department of housing and urban development on the department of local affairs' website; and

* (b) Credit counseling may include:

* (I) Discussion of amounts owed to the association in unpaid assessments and related costs;

* (II) The impact of foreclosure on the unit owner's credit;

* (III) Additional debt that may be incurred by the unit owner if foreclosure by the association is completed;

* (IV) Options available to the unit owner to retain title to the unit or to remain in the unit; and

* (V) Any other options that may be available to the unit owner to avoid foreclosure.

(10.5) To foreclose a lien described in this section:

(a) The association must have obtained a personal judgment against the unit owner in a civil action to collect the amounts due;

(b) The association must have attempted to bring a civil action against the unit owner but was prevented by the death of or incapacity of the unit owner;

(c) The association must have attempted to bring a civil action against the unit owner and made a reasonable attempt to serve the unit owner but the association was unable to serve the unit owner within one hundred eighty days; or

(d) The unit owner must have filed a bankruptcy petition or must have an involuntary bankruptcy petition filed against the unit owner, and the amount due the association is subject to the bankruptcy civil action.

(10.6) Subsection (10.5) of this section:

(a) Applies exclusively to a unit owned by an individual who occupies the unit as the unit owner's principal residence, unless the unit is used for workforce housing;

(b) Does not apply to a unit owned by an entity other than an individual or a unit that is not occupied as the unit owner's principal residence, unless the unit is used for workforce housing; and

(c) Applies to a unit used for workforce housing.

(10.7) (a) At least thirty days before initiating legal action to foreclose a lien under this section, the association shall provide written and electronic notice to the unit owner or the unit owner's designee that the unit owner has the right to engage in mediation prior to litigation. To initiate mediation, the unit owner must respond within thirty days after the date of the notice.

(b) To participate in mediation, both parties must:

(I) Select a mutually agreeable mediator knowledgeable about this article 33.3 and common interest community disputes; and

(II) Schedule the mediation session within thirty days after the notice provided in accordance with subsection (10.7)(a) of this section.

(c) If a unit owner fails to comply with subsection (10.7)(b) of this section within thirty days after the notice provided in accordance with subsection (10.7)(a) of this section, this subsection (10.7) does not bar the association from filing a civil action, which is subject to the rest of this section.

(d) At least thirty days before initiating legal action to foreclose a lien under this section, the association shall provide written and electronic notice to all lienholders identified on the unit owner property records of the pending legal action for foreclosure. The notice must include the amount of any outstanding assessment and other money owed.

* (10.8) (a) In addition to the notifications or information that the association is required pursuant to section 38-33.3-209.5 to provide to a unit owner prior to initiating a legal action, at least thirty days before initiating a legal action to foreclose an association lien under this section, the association shall provide notice to the unit owner of the association's intent to foreclose the lien under this section.

* (b) (I) The association shall send the notice of intent to foreclose the association lien to the unit owner or the unit owner's designated contact, if the unit owner has identified another individual to serve as a designated contact pursuant to section 38-33.3-209.5 (1.7). If the unit owner or the unit owner's designated contact has notified the association of a preference to receive notices in a language other than English pursuant to section 38-33.3-209.5 (1.7)(a)(I), the notice must be sent in the preferred language.

* (II) For purposes of providing the association's notice of intent to foreclose to the unit owner, if the association does not already have the information, prior to sending the notice, the association shall request from the unit owner or the unit owner's designated contact, a telephone number for phone calls, a cellular number for texts, and an email address for emails.

* (III) The association shall send the notice of intent to foreclose by certified mail, return receipt requested, and by at least two of the following means:

* (A) Telephone call to a telephone number that the association has on file because the unit owner or designated contact has provided the number to the association. If the association attempts to contact the unit owner or designated contact by telephone but is unable to contact the unit owner or designated contact, the association shall, if possible, leave a voice message for the unit owner or designated contact.

* (B) Text message to a cellular number that the association has on file because the unit owner or designated contact has provided the cellular number to the association;

* (C) Email to an email address that the association has on file because the unit owner or designated contact has provided the email address to the association; or

* (D) Regular mail, if the unit owner or designated contact has not provided a telephone number, cellular number, or email address as additional means by which to receive notices.

* (c) The notice of intent to foreclose the association lien must inform the unit owner that:

* (I) The association intends to file a lawsuit against the unit owner's property and that, if the court forecloses on the lien, the court will order the sale of the unit at auction to pay the delinquent assessments due to the association;

* (II) Based on the sale price of the unit at auction, the unit owner could lose some or all of the unit owner's equity in the unit;

* (III) Pursuant to subsection (10.3) of this section, the unit owner has a right to participate in credit counseling prior to foreclosure;

* (IV) Pursuant to subsection (10.7) of this section, the unit owner has a right to participate in mediation with the association prior to foreclosure; and

* (V) Pursuant to section 38-33.3-209.5 (5)(a)(V)(E), the owner has access to, and instructions on how to access, free online information through the HOA information and resources center created in section 12-10-801 (1) relating to foreclosure by an association.

* (d) Unless required under another provision of law, this subsection (10.8) does not apply to a time share unit, as defined in section 38-33-110 (7).

(11) Subject to subsection (10.5) of this section, 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; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

(I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

(II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

(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; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

(I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

(II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

(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.

* (11.2) No later than five business days after an association initiates legal action to foreclose a lien described in this section, the association shall provide written and electronic notice to all lienholders identified in the unit owner property records of:

* (a) The right to cure the nonpayment pursuant to section 38-38-104; and

* (b) The right of the unit owner to file a motion to stay the sale of the property at auction pursuant to section 38-38-109.5.

(12) (a) If a unit has been foreclosed pursuant to a lien subject to this section, the following persons shall not purchase a foreclosed unit:

(I) A member of the executive board;

(II) An employee of a community association management company representing the association;

(III) An employee of a law firm representing the association;

(IV) An immediate family member, as defined in section 2-4-401 (3.7), of an executive board member, community association management company employee, or law firm employee; or

(V) A community association management company representing the association.

(b) The prohibition on the purchase of a foreclosed unit in subsection (12)(a) of this section includes an individual or a community association management company that was, at any time during the five-year period immediately preceding the sale of the foreclosed unit, an individual or a community association management company described in subsection (12)(a) of this section. The prohibition in this section also includes a business entity that was, at any time during the five-year period immediately preceding the sale of the foreclosed unit, owned by or affiliated with an individual or community association management company described in subsection (12)(a) of this section.

(13) A person that purchases a unit through the foreclosure of a lien under this section acquires the unit subject to any covenants or limitations on the use or sale of the unit to which the previous unit owner was subject.

* (14) As used in this section, unless the context otherwise requires, "assessment" means a payment for common expense obligations of unit owners based on a periodic budget adopted by the association under section 38-33.3-315 (1), or a payment for limited common elements of unit owners, and includes fees specific to delinquent payments and reasonable collection costs for collecting delinquent payments.

§ 38-33.3-316.3, C.R.S. Collections – limitations.

(1) In collecting past-due assessments and other delinquent payments under this article, an association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, shall:

(a) Adopt and comply with a collections policy that meets the requirements of section 38-33.3-209.5 (5); and

(b) Make a good-faith effort to coordinate with the unit owner to set up a payment plan that meets the requirements of this section; except that:

(I) This section does not apply if the unit owner does not occupy the unit and has acquired the property as a result of:

(A) A default of a security interest encumbering the unit; or

(B) Foreclosure of the association's lien; and

(II) The association or a holder or assignee of the association's debt is not obligated to negotiate a payment plan with a unit owner who has previously entered into a payment plan under this section.

(2) A payment plan negotiated between the association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, and the unit owner pursuant to this section must permit the unit owner to pay off the deficiency in equal installments over a period of at least eighteen months. Nothing in this section prohibits an association or a holder or assignee of the association's debt from pursuing legal action against a unit owner if the unit owner fails to comply with the terms of the unit owner's payment plan. A unit owner's failure to remit payment of three or more agreed-upon installments pursuant to section 38-33.3-209.5 (7)(a)(III)(B), or to remain current with regular assessments as they come due during the eighteen-month period, constitutes a failure to comply with the terms of the unit owner's payment plan.

(3) Repealed.

(3.5) An association or the holder or assignee of the association's debts shall not foreclose a lien created under 38-33.3-316 if the unit owner is in compliance with the terms of a payment plan required by this section.

(4) If a unit owner who has both unpaid assessments and unpaid fines, fees, or other charges makes a payment to the association, the association shall apply the payment first to the assessments owed and any remaining amount of the payment to the fines, fees, or other charges owed.

(5) If an association has violated any foreclosure laws, the unit owner in relation to whom the violation occurred may, within five years after the violation occurred, file civil suit in a court of competent jurisdiction against the association to seek damages. The court may award the unit owner damages in an amount of up to twenty-five thousand dollars, plus costs and reasonable attorney fees, if the unit owner proves the violation by a preponderance of the evidence.

§ 38-33.3-316.5, C.R.S. Time share estate – foreclosure – definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Junior lienor" has the same meaning as set forth in section 38-38-100.3 (12), C.R.S.

(b) "Obligor" means the person liable for the assessment levied against a time share estate pursuant to section 38-33.3-316 or the record owner of the time share estate.

(c) "Time share estate" has the same meaning as set forth in section 38-33-110 (5).

(2) A plaintiff may commence a single judicial foreclosure action pursuant to section 38-33.3-316 (11), joining as defendants multiple obligors with separate time share estates and the junior lienors thereto, if:

(a) The judicial foreclosure action involves a single common interest community;

(b) The declaration giving rise to the right of the association to collect assessments creates default and remedy obligations that are substantially the same for each obligor named as a defendant in the judicial foreclosure action;

(c) The action is limited to a claim for judicial foreclosure brought pursuant to section 38-33.3-316 (11); and

(d) The plaintiff does not allege, with respect to any obligor, that the association's lien is prior to any security interest described in section 38-33.3-316 (2) (a) (II), even if such a claim could be made pursuant to section 38-33.3-316 (2) (b) (I).

(3) In a judicial foreclosure action in which multiple obligors with separate time share estates and the junior lienors thereto have been joined as defendants in accordance with this section:

(a) In addition to any other circumstances where severance is proper under the Colorado rules of civil procedure, the court may sever for separate trial any disputed claim or claims;

(b) If service by publication of two or more defendants is permitted by law, the plaintiff may publish a single notice for all joined defendants for whom service by publication is permitted, so long as all information that would be required by law to be provided in the published notice as to each defendant individually is included in the combined published notice. Nothing in this paragraph (b) shall be interpreted to allow service by publication of any defendant if service by publication is not otherwise permitted by law with respect to that defendant.

(c) The action shall be deemed a single action, suit, or proceeding for purposes of payment of filing fees, notwithstanding any action by the court pursuant to paragraph (a) of this subsection (3), so long as the plaintiff complies with subsection (2) of this section.

(4) Notwithstanding that multiple obligors with separate time share estates may be joined in a single judicial foreclosure action, unless otherwise ordered by the court, each time share estate foreclosed pursuant to this section shall be subject to a separate foreclosure sale, and any cure or redemption rights with respect to such time share estate shall remain separate.

(5) The plaintiff in an action brought pursuant to this section is deemed to waive any claims against a defendant for a deficiency remaining after the foreclosure of the lien for assessment and for attorney fees related to the foreclosure action.

§ 38-33.3-317, C.R.S. Association records – rules – applicability.

(1) In addition to any records specifically defined in the association's declaration or bylaws or expressly required by section 38-33.3-209.4 (2), the association must maintain the following, all of which shall be deemed to be the sole records of the association for purposes of document retention and production to owners:

(a) Detailed records of receipts and expenditures affecting the operation and administration of the association;

(b) Records of claims for construction defects and amounts received pursuant to settlement of those claims;

(c) Minutes of all meetings of its unit owners and executive board, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by any committee of the executive board;

(d) Written communications among, and the votes cast by, executive board members that are:

(I) Directly related to an action taken by the board without a meeting pursuant to section 7-128-202, C.R.S.; or

(II) Directly related to an action taken by the board without a meeting pursuant to the association's bylaws;

(e) The names of unit owners in a form that permits preparation of a list of the names of all unit owners and the physical mailing addresses at which the association communicates with them, showing the number of votes each unit owner is entitled to vote; except that this paragraph (e) does 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);

(f) Its current declaration, covenants, bylaws, articles of incorporation, if it is a corporation, or the corresponding organizational documents if it is another form of entity, rules and regulations, responsible governance policies adopted pursuant to section 38-33.3-209.5, and other policies adopted by the executive board;

(g) Financial statements as described in section 7-136-106, C.R.S., for the past three years and tax returns of the association for the past seven years, to the extent available;

(h) A list of the names, electronic mail addresses, and physical mailing addresses of its current executive board members and officers;

(h.5) A list of the current amounts of all unique and extraordinary fees, assessments, and expenses that are chargeable by the association in connection with the purchase or sale of a unit and are not paid for through assessments, including transfer fees, record change fees, and the charge for a status letter or statement of assessments due;

(h.6) All documents included in the association's annual disclosures made pursuant to section 38-33.3-209.4.

(i) Its most recent annual report delivered to the secretary of state, if any;

(j) Financial records sufficiently detailed to enable the association to comply with section 38-33.3-316 (8) concerning statements of unpaid assessments;

(k) The association's most recent reserve study, if any;

(l) Current written contracts to which the association is a party and contracts for work performed for the association within the immediately preceding two years;

(m) Records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners;

(n) Ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate;

(o) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members; and

(p) All written communications within the past three years to all unit owners generally as unit owners.

(2) (a) Subject to subsections (3), (3.5), and (4) of this section, all records maintained by the association must be available for examination and copying by a unit owner or the owner's authorized agent. The association may require unit owners to submit a written request, describing with reasonable particularity the records sought, at least ten days prior to inspection or production of the documents and may limit examination and copying times to normal business hours or the next regularly scheduled executive board meeting if the meeting occurs within thirty days after the request. Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations of the association to the contrary, the association may not condition the production of records upon the statement of a proper purpose.

(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) Records maintained by an association may be withheld from inspection and copying to the extent that they are or concern:

(a) Architectural drawings, plans, and designs, unless released upon the written consent of the legal owner of the drawings, plans, or designs;

(b) Contracts, leases, bids, or records related to transactions to purchase or provide goods or services that are currently in or under negotiation;

(c) Communications with legal counsel that are otherwise protected by the attorney-client privilege or the attorney work product doctrine;

(d) Disclosure of information in violation of law;

(e) Records of an executive session of an executive board;

(f) Individual units other than those of the requesting owner; or

(g) The names and physical mailing addresses of unit owners if the unit is a time-share unit, as defined in section 38-33-110 (7).

(3.5) Records maintained by an association are not subject to inspection and copying, and they must be withheld, to the extent that they are or concern:

(a) Personnel, salary, or medical records relating to specific individuals; or

(b) (I) Personal identification and account information of members and residents, including bank account information, telephone numbers, electronic mail addresses, driver's license numbers, and social security numbers; except that, notwithstanding section 38-33.3-104, a member or resident may provide the association with prior written consent to the disclosure of, and the association may publish to other members and residents, the person's telephone number, electronic mail address, or both. The written consent must be kept as a record of the association and remains valid until the person withdraws it by providing the association with a written notice of withdrawal of the consent. If a person withdraws his or her consent, the association is under no obligation to change, retrieve, or destroy any document or record published prior to the notice of withdrawal.

(II) As used in this paragraph (b), written consent and notice of withdrawal of the consent may be given by means of a "record", as defined in the "Uniform Electronic Transactions Act", article 71.3 of title 24, C.R.S., if the parties so agree in accordance with section 24-71.3-105, C.R.S.

(4) The association may impose a reasonable charge, which may be collected in advance and may cover the costs of labor and material, for copies of association records. The charge may not exceed the estimated cost of production and reproduction of the records, including the costs of copying, mailing, and any necessary special processing.

(4.5) If the association fails to allow inspection or copying of records in accordance with this section within thirty calendar days after receipt of a written request submitted by certified mail, return receipt requested, and payment of any fees required pursuant to subsection (4) of this section, the association is liable for penalties in the amount of fifty dollars per day, commencing on the eleventh business day after the association received the written request, up to a maximum of five hundred dollars or the unit owner's actual damages sustained as a result of the refusal, whichever is greater.

(5) A right to copy records under this section includes the right to receive copies by photocopying or other means, including the receipt of copies through an electronic transmission if available, upon request by the unit owner.

(6) An association is not obligated to compile or synthesize information.

(7) Association records and the information contained within those records shall not be used for commercial purposes.

(8) Subsections (1)(h.5), (1)(h.6), and (4.5) of this section, as added by House Bill 21-1229, enacted in 2021, and subsection (4) of this section, as amended by House Bill 21-1229, enacted in 2021, do not apply to an association that includes time share units, as defined in section 38-33-110 (7).

§ 38-33.3-318, C.R.S. 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, C.R.S. 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.

§ 38-33.3-401, C.R.S. Registration – annual fees.

(1) Every unit owners' association shall register annually with the director of the division of real estate, in the form and manner specified by the director.

(2) (a) Except as otherwise provided in subsection (2)(b) of this section, the unit owners' association shall submit with its annual registration a fee in the amount set by the director in accordance with section 12-10-215 and shall include the following information, updated within ninety days after any change:

(I) The name of the association, as shown in the Colorado secretary of state's records;

(II) The name of the association's management company, managing agent, or designated agent, which may be the association's registered agent, as shown in the Colorado secretary of state's records, or any other agent that the executive board has designated for purposes of registration under this section;

(III) The physical address of the HOA;

(IV) A valid address; email address, if any; website, if any; and telephone number for the association or its management company, managing agent, or designated agent; and

(V) The number of units in the association.

(b) A unit owners' association is exempt from the fee, but not the registration requirement, if the association:

(I) Has annual revenues of five thousand dollars or less; or

(II) Is not authorized to make assessments and does not have revenue.

(3) A registration is valid for one year. The right of an association that fails to register, or whose annual registration has expired, to impose or enforce a lien for assessments under section 38-33.3-316 or to pursue an action or employ an enforcement mechanism otherwise available to it under section 38-33.3-123 is suspended until the association is validly registered pursuant to this section. A lien for assessments previously recorded during a period in which the association was validly registered or before registration was required pursuant to this section is not extinguished by a lapse in the association's registration, but a pending enforcement

proceeding related to the lien is suspended, and an applicable time limit is tolled, until the association is validly registered pursuant to this section. An association's registration in compliance with this section revives a previously suspended right without penalty to the association.

* (3.2) As part of an association's annual registration, the association shall submit the following information to the director of the division of real estate, in the form and manner determined by the director of the division of real estate:

* (a) For the twelve-month period immediately preceding the association's annual registration, the number of unit owners that were, at any time during the twelve-month period, six or more calendar months delinquent in the payment of an annual assessment or special assessment;

* (b) For the twelve-month period immediately preceding the association's annual registration, for unpaid annual assessments or special assessments or related fees or attorney fees:

* (I) The number of unit owners against which the association or its designee obtained a judgment;

* (II) The number of payment plans entered into between the association and a unit owner pursuant to section 38-33.3-316.3; and

* (III) The number of foreclosure actions filed against unit owners pursuant to section 38-33.3-316; and

* (c) Any other information specified by the director of the division of real estate relating to the collection of assessments and the foreclosure of the association's liens.

(4) (a) A registration is valid upon the division of real estate's acceptance of the information required by paragraph (a) of subsection (2) of this section and the payment of applicable fees.

(b) An association's registration number, and an electronic or paper confirmation issued by the division of real estate, are prima facie evidence of valid registration.

(c) The director of the division of real estate's final determinations concerning the validity or timeliness of registrations under this section are subject to judicial review pursuant to section 24-4-106 (11), C.R.S.; except that the court shall not find a registration invalid based solely on technical or typographical errors.

§ 38-33.3-402. C.R.S. Manager licensing – condition precedent for enforcement of contract terms. (Repealed)

VII. Colorado Revised Nonprofit Corporation Act[3]

ARTICLE 121. GENERAL PROVISIONS

§ 7-121-101, C.R.S. Short title.

Articles 121 to 137 of this title shall be known and may be cited as the "Colorado Revised Nonprofit Corporation Act".

§ 7-121-102, C.R.S. Reservation of power to amend or repeal.

The general assembly has the power to amend or repeal all or part of articles 121 to 137 of this title at any time and all domestic and foreign nonprofit corporations subject to said articles shall be governed by the amendment or repeal.

[3] Colorado Revised Statutes are subject to change through the legislative process. Check the Division website for updates.

§ 7-121-201, C.R.S. Filing requirements.

Part 3 of article 90 of this title, providing for the filing of documents, applies to any document filed or to be filed by the secretary of state pursuant to articles 121 to 137 of this title.

§ 7-121-301, C.R.S. Powers – repeal. (Repealed)

§ 7-121-401, C.R.S. General definitions.

As used in articles 121 to 137 of this title, unless the context otherwise requires:

(1) (Deleted by amendment, L. 2003, p. 2332, §280, effective July 1, 2004.)

(2) "Articles of incorporation" includes amended articles of incorporation, restated articles of incorporation, and other instruments, however designated, on file in the records of the secretary of state that have the effect of amending or supplementing in some respect the original or amended articles of incorporation, and shall also include:

(a) For a corporation created by special act of the general assembly or pursuant to general law, which corporation has elected to accept the provisions of articles 121 to 137 of this title, the special charter and any amendments thereto made by special act of the general assembly or pursuant to general law prior to the corporation's election to accept the provisions of said articles;

(b) For a corporation formed or incorporated under article 40, 50, or 51 of this title, which corporation has elected to accept the provisions of articles 121 to 137 of this title, the certificate of incorporation or affidavit and any amendments thereto made prior to the corporation's election to accept the provisions of said articles.

(3) (Deleted by amendment, L. 2003, p. 2332, §280, effective July 1, 2004.)

(4) "Board of directors" means the body authorized to manage the affairs of the domestic or foreign nonprofit corporation; except that no person or group of persons are the board of directors because of powers delegated to that person or group of persons pursuant to section 7-128-101 (2).

(5) "Bylaws" means the code or codes of rules, other than the articles of incorporation, adopted pursuant to articles 121 to 137 of this title for the regulation or management of the affairs of the domestic or foreign nonprofit corporation irrespective of the name or names by which such rules are designated, and includes amended bylaws and restated bylaws.

(6) "Cash" and "money" are used interchangeably in articles 121 to 137 of this title. Each of these terms includes:

(a) Legal tender;

(b) Negotiable instruments readily convertible into legal tender; and

(c) Other cash equivalents readily convertible into legal tender.

(7) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption, and transfer. For the purpose of this section, rights shall be considered the same if they are determined by a formula applied uniformly to a group of memberships.

(8) (Deleted by amendment, L. 2000, p. 982, §76, effective July 1, 2000.)

(9) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of articles 101 to 117 of this title.

(10) "Delegate" means any person elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(11) (Deleted by amendment, L. 2003, p. 2332, §280, effective July 1, 2004.)

(12) "Director" means a member of the board of directors.

(13) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

(14) (Deleted by amendment, L. 2003, p. 2332, §280, effective July 1, 2004.)

(15) "Effective date of notice" has the meaning set forth in section 7-121-402.

(16) "Employee" includes an officer but not a director; except that a director may accept duties that make said director also an employee.

(16.5) "Entrance fee" means any fee or charge, including a damage deposit, paid by a person to a residential nonprofit corporation in order to become a resident member. "Entrance fee" does not include regular periodic payments for the purchase or lease of residential real estate or for the day-to-day use of facilities or services.

(17) to (20) (Deleted by amendment, L. 2003, p. 2332, §280, effective July 1, 2004.)

(21) "Internal revenue code" means the federal "Internal Revenue Code of 1986", as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States of America.

(22) and (23) (Deleted by amendment, L. 2003, p. 2332, §280, effective July 1, 2004.)

(24) "Member" means any person or persons identified as such in the articles of incorporation or bylaws pursuant to a procedure stated in the articles of incorporation or bylaws or by a resolution of the board of directors. The term "member" includes "voting member" and a stockholder in a cooperative housing corporation formed pursuant to section 38-33.5-101, C.R.S.

(25) "Membership" refers to the rights and obligations of a member or members.

(25.5) "Mutual ditch company" means a nonprofit corporation that complies with article 42 of this title.

(26) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity, which is not a foreign nonprofit corporation, incorporated under or subject to the provisions of articles 121 to 137 of this title.

(27) to (29) (Deleted by amendment, L. 2003, p. 2332, §280, effective July 1, 2004.)

(30) "Receive", when used in reference to receipt of a writing or other document by a domestic or foreign nonprofit corporation, means that the writing or other document is actually received:

(a) By the domestic or foreign nonprofit corporation at its registered office or at its principal office;

(b) By the secretary of the domestic or foreign nonprofit corporation, wherever the secretary is found; or

(c) By any other person authorized by the bylaws or the board of directors to receive such writings, wherever such person is found.

(31) "Record date" means the date, established under article 127 of this title, on which a nonprofit corporation determines the identity of its members. The determination shall be made as of the close of business on the record date unless another time for doing so is stated when the record date is fixed.

(32) (Deleted by amendment, L. 2003, p. 2332, §280, effective July 1, 2004.)

(32.5) "Residential member" means a member of a residential nonprofit corporation whose status as a member is dependent upon, or whose membership is accorded voting rights as a result of, owning or leasing specified residential real estate.

(33) (Deleted by amendment, L. 2003, p. 2332, §280, effective July 1, 2004.)

(33.5) (a) Except as otherwise provided in paragraph (b) of this subsection (33.5), "residential nonprofit corporation" means a nonprofit corporation that has residential members.

(b) Notwithstanding paragraph (a) of this subsection (33.5), "residential nonprofit corporation" does not include:

(I) A unit owners' association or any other entity subject to the "Colorado Common Interest Ownership Act", article 33.3 of title 38, C.R.S., regardless of whether it was formed before, on, or after July 1, 1992;

(II) A nursing care facility licensed by the department of public health and environment under section 25-3-101, C.R.S.;

(III) An assisted living residence licensed under section 25-3-101, C.R.S.;

(IV) A life care institution regulated under article 13 of title 12, C.R.S.; or

* (V) A continuing care retirement community, as described in section 25.5-4-402.4 (4.5)(d)(II)(A), operated by an entity that is licensed or otherwise subject to state regulation.

(34) "Secretary" means the corporate officer to whom the bylaws or the board of directors has delegated responsibility under section 7-128-301 (3) for the preparation and maintenance of minutes of the meetings of the board of directors and of the members and of the other records and information required to be kept by the nonprofit corporation under section 7-136-101 and for authenticating records of the nonprofit corporation.

(35) to (37) (Deleted by amendment, L. 2003, p. 2332, §280, effective July 1, 2004.)

(38) "Vote" includes authorization by written ballot and written consent.

(39) "Voting group" means all the members of one or more classes of members or directors that, under articles 121 to 137 of this title or the articles of incorporation or bylaws, are entitled to vote and be counted together collectively on a matter. All members or directors entitled by articles 121 to 137 of this title or the articles of incorporation or bylaws to vote generally on the matter are for that purpose a single voting group.

(40) "Voting member" means any person or persons who on more than one occasion, pursuant to a provision of a nonprofit corporation's articles of incorporation or bylaws, have the right to vote for the election of a director or directors. A person is not a voting member solely by virtue of any of the following:

(a) Any rights such person has as a delegate;

(b) Any rights such person has to designate a director or directors; or

(c) Any rights such person has as a director.

§ 7-121-402, C.R.S. Notice.

(1) Notice given pursuant to articles 121 to 137 of this title shall be in writing unless otherwise provided in the bylaws.

(2) Notice may be given in person; by telephone, telegraph, teletype, electronically transmitted, or other form of wire or wireless communication; or by mail or private carrier. The bylaws may provide that if these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published.

(3) Written notice by a nonprofit corporation to its members, if mailed, is correctly addressed if addressed to the member's address shown in the nonprofit corporation's current record of members. If three successive notices given to a member pursuant to subsection (5) of this section have been returned as undeliverable, no further notices to such member shall be necessary until another address for the member is made known to the nonprofit corporation.

(4) Written notice to a domestic nonprofit corporation or to a foreign nonprofit corporation authorized to transact business or conduct activities in this state, other than in its capacity as a member, is correctly addressed if addressed to the registered agent address of its registered agent or to the domestic or foreign nonprofit corporation or its secretary at its principal office.

(5) Written notice by a nonprofit corporation to its members, if in a comprehensible form, is effective at the earliest of:

(a) The date received;

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with first class postage affixed;

(c) The date shown on the return receipt, if mailed by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;

(d) Thirty days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with other than first class, registered, or certified postage affixed.

(6) Oral notice is effective when communicated if communicated in a comprehensible manner.

(7) Notice by publication is effective on the date of first publication.

(8) If articles 121 to 137 of this title prescribe notice requirements for particular circumstances, those requirements govern. If the articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of articles 121 to 137 of this title, those requirements govern.

(9) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the nonprofit corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the nonprofit corporation's current list of members, if addressed or delivered to one of such members, at the address appearing on the current list of members.

§ 7-121-501, C.R.S. Private foundations.

(1) Except where otherwise determined by a court of competent jurisdiction, a nonprofit corporation that is a private foundation as defined in section 509 (a) of the internal revenue code:

(a) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the nonprofit corporation to tax under section 4942 of the internal revenue code;

(b) Shall not engage in any act of self-dealing as defined in section 4941 (d) of the internal revenue code;

(c) Shall not retain any excess business holdings as defined in section 4943 (c) of the internal revenue code;

(d) Shall not make any investments that would subject the nonprofit corporation to taxation under section 4944 of the internal revenue code;

(e) Shall not make any taxable expenditures as defined in section 4945 (d) of the internal revenue code.

§ 7-121-601, C.R.S. Judicial relief.

(1) If for any reason it is impractical or impossible for any nonprofit corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by articles 121 to 137 of this title, its articles of incorporation, or bylaws, then upon petition of a director, officer, delegate, or member the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located, or if the nonprofit corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located, or if the nonprofit corporation has no registered agent, the district court for the city and county of Denver, may order that such a

meeting be called or that a written consent or other form of obtaining the vote of members, delegates, or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(2) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to articles 121 to 137 of this title, the articles of incorporation, or bylaws and whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by articles 121 to 137 of this title, the articles of incorporation, or bylaws.

(4) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles of incorporation or bylaws, the resolution of which will or may enable the nonprofit corporation to continue managing its affairs without further resort to this section; except that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.

(5) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section and that complies with all the provisions of such order is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by articles 121 to 137 of this title, the articles of incorporation, or bylaws.

(6) Court ordered meetings may also be held pursuant to section 7-127-103.

ARTICLE 122. INCORPORATION

§ 7-122-101, C.R.S. Incorporators.

One or more persons may act as the incorporator or incorporators of a nonprofit corporation by delivering articles of incorporation to the secretary of state for filing pursuant to part 3 of article 90 of this title. An incorporator who is an individual shall be eighteen years of age or older.

§ 7-122-102, C.R.S. Articles of incorporation.

(1) The articles of incorporation shall state:

- (a) The domestic entity name for the nonprofit corporation, which domestic entity name shall comply with part 6 of article 90 of this title;
- (b) The registered agent name and registered agent address of the nonprofit corporation's initial registered agent;
- (c) The principal office address of the nonprofit corporation's initial principal office;
- (d) The true name and mailing address of each incorporator;
- (e) Whether or not the nonprofit corporation will have voting members; and
- (f) Repealed.
- (g) Provisions not inconsistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may but need not state:

- (a) The names and addresses of the individuals who are elected to serve as the initial directors;
- (b) Provisions not inconsistent with law regarding:

(I) The purpose or purposes for which the nonprofit corporation is incorporated;

(II) Managing and regulating the affairs of the nonprofit corporation;

(III) Defining, limiting, and regulating the powers of the nonprofit corporation, its board of directors, and its members, or any class of members; and

(IV) Whether cumulative voting will be permitted;

(c) Any provision that under articles 121 to 137 of this title is required or permitted to be stated in the bylaws;

(d) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.

(3) The articles of incorporation need not state any of the corporate powers enumerated in articles 121 to 137 of this title.

(4) If articles 121 to 137 of this title condition any matter upon the presence of a provision in the bylaws, the condition is satisfied if such provision is present either in the articles of incorporation or the bylaws. If articles 121 to 137 of this title condition any matter upon the absence of a provision in the bylaws, the condition is satisfied only if the provision is absent from both the articles of incorporation and the bylaws.

§ 7-122-103, C.R.S. Incorporation.

(1) A nonprofit corporation is incorporated when the articles of incorporation are filed by the secretary of state or, if a delayed effective date is stated pursuant to section 7-90-304 in the articles of incorporation as filed by the secretary of state and if a statement of change revoking the articles of incorporation is not filed before such effective date, on such delayed effective date. The corporate existence begins upon incorporation.

(2) The secretary of state's filing of the articles of incorporation is conclusive that all conditions precedent to incorporation have been met.

§ 7-122-104, C.R.S. Unauthorized assumption of corporate powers.

All persons purporting to act as or on behalf of a nonprofit corporation without authority to do so and without good-faith belief that they have such authority shall be jointly and severally liable for all liabilities incurred or arising as a result thereof.

§ 7-122-105, C.R.S. Organization of nonprofit corporation.

(1) After incorporation:

(a) If initial directors are not named in the articles of incorporation, the incorporators shall hold a meeting, at the call of a majority of the incorporators, to adopt initial bylaws, if desired, and to elect a board of directors; and

(b) If initial directors are named in the articles of incorporation, the initial directors shall hold a meeting, at the call of a majority of the directors, to adopt bylaws, if desired, to appoint officers, and to carry on any other business.

(2) Action required or permitted by articles 121 to 137 of this title to be taken by incorporators at an organizational meeting may be taken without a meeting if the action is taken in the manner provided in section 7-128-202 for action by directors without a meeting.

(3) An organizational meeting may be held in or out of this state.

§ 7-122-106, C.R.S. Bylaws.

(1) The board of directors or, if no directors have been named or elected, the incorporators may adopt initial bylaws. If neither the incorporators nor the board of directors have adopted initial bylaws, the members may do so.

(2) The bylaws of a nonprofit corporation may contain any provision for managing and regulating the affairs of the nonprofit corporation that is not inconsistent with law or with the articles of incorporation.

§ 7-122-107, C.R.S. Emergency bylaws.

(1) Unless otherwise provided in the articles of incorporation, the board of directors may adopt bylaws to be effective only in an emergency as defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may include all provisions necessary for managing the nonprofit corporation during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws shall remain in effect during the emergency. The emergency bylaws shall not be effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Binds the nonprofit corporation; and

(b) May not be the basis for imposition of liability on any director, officer, employee, or agent of the nonprofit corporation on the ground that the action was not authorized corporate action.

(4) An emergency exists for the purposes of this section if a quorum of the directors cannot readily be obtained because of some catastrophic event.

ARTICLE 123. PURPOSES AND POWERS

§ 7-123-101, C.R.S. Purposes and applicability.

(1) Every nonprofit corporation incorporated under articles 121 to 137 of this title has the purpose of engaging in any lawful business or activity unless a more limited purpose is stated in the articles of incorporation.

(2) Where another statute of this state requires that corporations of a particular class be formed or incorporated exclusively under that statute, corporations of that class shall be formed or incorporated under such other statute. The corporation shall be subject to all limitations of the other statute.

(3) Where another statute of this state requires nonprofit corporations of a particular class to be formed or incorporated under that statute and also under general nonprofit corporation statutes, such nonprofit corporations shall be formed or incorporated under such other statute and, in addition thereto, under articles 121 to 137 of this title to the extent general nonprofit corporation law is applicable.

(4) Where another statute of this state permits nonprofit corporations of a particular class to be formed or incorporated either under that statute or under the general nonprofit corporation statutes, a nonprofit corporation of that class may at the election of its incorporators be formed or incorporated under articles 121 to 137 of this title. Unless the articles of incorporation of a nonprofit corporation indicate that it is formed or incorporated under another statute, the nonprofit corporation shall for all purposes be considered as formed and incorporated under articles 121 to 137 of this title.

(5) Articles 121 to 137 of this title shall apply to nonprofit corporations of every class, whether or not included in the term "nonprofit corporation" as defined in section 7-121-401 (26), that are formed or incorporated under and governed by other statutes of this state to the extent that said articles are not inconsistent with such other statutes.

(6) Articles 121 to 137 of this title shall apply to any nonprofit corporation formed prior to January 1, 1968, under article 40 or 50 of this title without shares or capital stock and for a purpose for which a nonprofit corporation might be formed under articles 121 to 137 of this title and that elects to accept said articles as provided therein.

(7) Articles 121 to 137 of this title shall apply to any corporation having shares or capital stock and formed under article 40, 50, or 51 of this title, and each nonprofit corporation whether with or without shares or capital stock formed prior to January 1, 1968, under general law or created by special act of the general assembly for a purpose for which a nonprofit corporation may be formed under articles 121 to 137 of this title, but not otherwise entitled to the rights, privileges, immunities, and franchises provided by said articles that elects to accept said articles as provided therein.

(8) A mutual ditch company may elect by a statement in its articles of incorporation that one or more of the provisions of the "Colorado Business Corporation Act", articles 101 to 117 of this title, apply to the mutual ditch company in lieu of one or more of the provisions of articles 121 to 137 of this title.

§ 7-123-102, C.R.S. General powers.

(1) Unless otherwise provided in the articles of incorporation, every nonprofit corporation has perpetual duration and succession in its domestic entity name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including the power:

(a) To sue and be sued, complain, and defend in its name;

(b) To have a corporate seal, which may be altered at will, and to use such seal, or a facsimile thereof, including a rubber stamp, by impressing or affixing it or by reproducing it in any other manner;

(c) To make and amend bylaws;

(d) To purchase, receive, lease, and otherwise acquire, and to own, hold, improve, use, and otherwise deal with, real or personal property or any legal or equitable interest in property, wherever located;

(e) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(f) To purchase, receive, subscribe for, and otherwise acquire shares and other interests in, and obligations of, any other entity; and to own, hold, vote, use, sell, mortgage, lend, pledge, and otherwise dispose of, and deal in and with, the same;

(g) To make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(h) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment; except that a nonprofit corporation may not lend money to or guarantee the obligation of a director or officer of the nonprofit corporation;

(i) To be an agent, an associate, a fiduciary, a manager, a member, a partner, a promoter, or a trustee of, or to hold any similar position with, any entity;

(j) To conduct its activities, locate offices, and exercise the powers granted by articles 121 to 137 of this title within or without this state;

(k) To elect or appoint directors, officers, employees, and agents of the nonprofit corporation, define their duties, and fix their compensation;

(l) To pay pensions and establish pension plans, pension trusts, profit sharing plans, and other benefit or incentive plans for any of its current or former directors, officers, employees, and agents;

(m) To make donations for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;

(n) To impose dues, assessments, admission, and transfer fees upon its members;

(o) To establish conditions for admission of members, admit members, and issue or transfer memberships;

(p) To carry on a business;

(q) To make payments or donations and to do any other act, not inconsistent with law, that furthers the affairs of the nonprofit corporation;

(r) To indemnify current or former directors, officers, employees, fiduciaries, or agents as provided in article 129 of this title;

(s) To limit the liability of its directors as provided in section 7-128-402 (1); and

(t) To cease its corporate activities and dissolve.

(2) Unless permitted by another statute of this state or otherwise permitted pursuant to section 7-123-101 (5), 7-123-101 (7), or 7-137-201, a nonprofit corporation shall not authorize or issue shares of stock.

§ 7-123-103, C.R.S. Emergency powers.

(1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) Relocate the principal office or designate additional offices, or authorize officers to do so.

(2) During an emergency as contemplated in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication or radio; and

(b) One or more officers of the nonprofit corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the nonprofit corporation:

(a) Binds the nonprofit corporation; and

(b) May not be the basis for the imposition of liability on any director, officer, employee, or agent of the nonprofit corporation on the ground that the action was not authorized corporate action.

(4) An emergency exists for purposes of this section if a quorum of the directors cannot readily be obtained because of some catastrophic event.

§ 7-123-104, C.R.S. Ultra vires.

(1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the ground that the nonprofit corporation lacks or lacked power to act.

(2) A nonprofit corporation's power to act may be challenged:

(a) In a proceeding against the nonprofit corporation to enjoin the act. The proceeding may be brought by a director or by a voting member or voting members in a derivative proceeding.

(b) In a proceeding by or in the right of the nonprofit corporation, whether directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the nonprofit corporation; or

(c) In a proceeding by the attorney general under section 7-134-301.

(3) In a proceeding under paragraph (a) of subsection (2) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if it would be equitable to do so and if all affected persons are parties to the proceeding, and may award damages for loss, including anticipated profits, suffered by the nonprofit corporation or another party because of the injunction.

§ 7-123-105, C.R.S. Actions against nonprofit corporations.

Any other provision of law to the contrary notwithstanding, any civil action permitted under the law of this state may be brought against any nonprofit corporation, and the assets of any nonprofit corporation that would, but for articles 121 to 137 of this title, be immune from levy and execution on any judgment shall nonetheless be subject to levy and execution to the extent that such nonprofit corporation would be reimbursed by proceeds of liability insurance policies carried by it were judgment levied and executed against its assets.

ARTICLE 124. NAME

§ 7-124-101, C.R.S. Corporate name. (Repealed)

§ 7-124-102, C.R.S. Reserved name. (Repealed)

ARTICLE 125. OFFICE AND AGENT

§ 7-125-101, C.R.S. Registered office and registered agent.

Part 7 of article 90 of this title, providing for registered agents and service of process, applies to nonprofit corporations incorporated under or subject to articles 121 to 137 of this title.

ARTICLE 126. MEMBERS AND MEMBERSHIPS

§ 7-126-101, C.R.S. No requirement of members.

A nonprofit corporation is not required to have members.

§ 7-126-102, C.R.S. Admission.

(1) The bylaws may establish criteria or procedures for admission of members.

(2) No person shall be admitted as a member without such person's consent.

(3) A nonprofit corporation may issue certificates evidencing membership therein.

§ 7-126-103, C.R.S. Liability to third parties.

The directors, officers, employees, and members of a nonprofit corporation are not, as such, personally liable for the acts, debts, liabilities, or obligations of a nonprofit corporation.

§ 7-126-104, C.R.S. Consideration.

Unless otherwise provided by the bylaws, a nonprofit corporation may admit members for no consideration or for such consideration as is determined by the board of directors.

§ 7-126-201, C.R.S. Differences in rights and obligations of members.

(1) Unless otherwise provided by articles 121 to 137 of this title or the bylaws:

(a) All voting members shall have the same rights and obligations with respect to voting and all other matters that articles 121 to 137 of this title specifically reserve to voting members; and

(b) With respect to matters not so reserved, all members, including voting members, shall have the same rights and obligations.

§ 7-126-202, C.R.S. Transfers.

(1) Unless otherwise provided by the bylaws, no member of a nonprofit corporation may transfer a membership or any right arising therefrom.

(2) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the affected member.

§ 7-126-203, C.R.S. Creditor's action against member.

No proceeding may be brought by a creditor to reach the liability, if any, of a member to the nonprofit corporation unless final judgment has been rendered in favor of the creditor against the nonprofit corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.

§ 7-126-301, C.R.S. Resignation.

(1) Unless otherwise provided by the bylaws, a member may resign at any time.

(2) The resignation of a member does not relieve the member from any obligations the member may have to the nonprofit corporation as a result of obligations incurred or commitments made prior to resignation.

§ 7-126-302, C.R.S. Termination, expulsion, or suspension.

(1) Unless otherwise provided by the bylaws, no member of a nonprofit corporation may be expelled or suspended, and no membership or memberships in such nonprofit corporation may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) For purposes of this section, a procedure is fair and reasonable when either:

(a) The bylaws or a written policy of the board of directors state a procedure that provides:

(I) Not less than fifteen days prior written notice of the expulsion, suspension, or termination and the reasons therefor; and

(II) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or

(b) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(3) For purposes of this section, any written notice given by mail must be given by first-class or certified mail sent to the last address of the member shown on the nonprofit corporation's records.

(4) Unless otherwise provided by the bylaws, any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, or termination.

(5) Unless otherwise provided by the bylaws, a member who has been expelled or suspended may be liable to the nonprofit corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

§ 7-126-303, C.R.S. Purchase of memberships.

Unless otherwise provided by the bylaws, a nonprofit corporation shall not purchase the membership of a member who resigns or whose membership is terminated. If so authorized, a nonprofit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions stated in or authorized by its bylaws. No payment shall be made in violation of article 133 of this title.

§ 7-126-304, C.R.S. Residential membership – return of consideration – cessation of periodic payments – time limits – effective date.

(1) Notwithstanding any provision of the articles of incorporation or bylaws to the contrary:

(a) (I) A residential nonprofit corporation shall refund the entrance fee of a residential member to the member or his or her heirs within ninety days after a transfer of the residential membership.

(II) (A) This paragraph (a) applies only to contracts entered into on or after March 11, 2011.

(B) (Deleted by amendment, L. 2012.)

(b) (Deleted by amendment, L. 2012.)

§ 7-126-401, C.R.S. Derivative suits.

(1) Without affecting the right of a member or director to bring a proceeding against a nonprofit corporation or its officers or directors, a proceeding may be brought in the right of a nonprofit corporation to procure a judgment in its favor by:

(a) Any voting member or voting members having five percent or more of the voting power; or

(b) Any director.

(2) In any such proceeding, each complainant shall be a voting member or director at the time of bringing the proceeding.

(3) A complaint in a proceeding brought in the right of a nonprofit corporation must be verified and allege with particularity the demand made, if any, to obtain action by the directors and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the nonprofit corporation's investigation of the demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

(4) In any action instituted in the right of a nonprofit corporation by one or more voting members, the court having jurisdiction over the matter may, at any time before final judgment, require the plaintiff to give security for the costs and reasonable expenses that may be directly attributable to and incurred by the nonprofit corporation in the defense of such action or may be incurred by other parties named as defendant for which the nonprofit corporation may become legally liable, but not including fees of attorneys. The amount of such security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. If the court finds that the action was commenced without reasonable cause, the nonprofit corporation shall have recourse to such security in such amount as the court shall determine upon the termination of such action.

(5) No action shall be commenced in this state by a member of a foreign nonprofit corporation in the right of a foreign nonprofit corporation unless such action is permitted by the law of the state under which such foreign nonprofit corporation is incorporated.

§ 7-126-501, C.R.S. Delegates.

(1) A nonprofit corporation may provide in its bylaws for delegates having some or all of the authority of members.

(2) The bylaws may state provisions relating to:

(a) The characteristics, qualifications, rights, limitations, and obligations of delegates, including their selection and removal;

(b) Calling, noticing, holding, and conducting meetings of delegates; and

(c) Carrying on corporate activities during and between meetings of delegates.

ARTICLE 127. MEMBERS' MEETINGS AND VOTING

§ 7-127-101, C.R.S. Annual and regular meetings.

(1) Unless the bylaws eliminate the requirement for holding an annual meeting, a nonprofit corporation that has voting members shall hold a meeting of the voting members annually at a time stated in or fixed in accordance with the bylaws, or, if not so fixed, at a time and date stated in or fixed in accordance with a resolution of the board of directors.

(2) A nonprofit corporation with members may hold regular membership meetings at a time and date stated in or fixed in accordance with the bylaws, or, if not so fixed, at a time and date stated in or fixed in accordance with a resolution of the board of directors.

(3) Annual and regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws, or, if not so stated or fixed, at a place stated or fixed in accordance with a resolution of the board of directors. If no place is so stated or fixed, annual and regular meetings shall be held at the nonprofit corporation's principal office.

(4) The failure to hold an annual or regular meeting at the time and date determined pursuant to subsection (1) of this section does not affect the validity of any corporate action and does not work a forfeiture or dissolution of the nonprofit corporation.

§ 7-127-102, C.R.S. Special meeting.

(1) A nonprofit corporation shall hold a special meeting of its members:

(a) On call of its board of directors or the person or persons authorized by the bylaws or resolution of the board of directors to call such a meeting; or

(b) Unless otherwise provided by the bylaws, if the nonprofit corporation receives one or more written demands for the meeting, stating the purpose or purposes for which it is to be held, signed and dated by members holding at least ten percent of all the votes entitled pursuant to the bylaws to be cast on any issue proposed to be considered at the meeting.

(2) If not otherwise fixed under section 7-127-103 or 7-127-106, the record date for determining the members entitled to demand a special meeting pursuant to paragraph (b) of subsection (1) of this section is the date of the earliest of any of the demands pursuant to which the meeting is called, or the date that is sixty days before the date the first of such demands is received by the nonprofit corporation, whichever is later.

(3) If a notice for a special meeting demanded pursuant to paragraph (b) of subsection (1) of this section is not given pursuant to section 7-127-104 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (4) of this section, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to section 7-127-104.

(4) Special meetings of the members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws, or, if not so stated or fixed, at a place stated or fixed in accordance with a resolution of the board of directors. If no place is so stated or fixed, special meetings shall be held at the nonprofit corporation's principal office.

(5) Unless otherwise provided by the bylaws, only business within the purpose or purposes described in the notice of the meeting required by section 7-127-104 (3) may be conducted at a special meeting of the members.

§ 7-127-103, C.R.S. Court-ordered meeting.

(1) The holding of a meeting of the members may be summarily ordered by the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, by the district court for the county in which the street address of its registered agent is located or, if the nonprofit corporation has no registered agent, by the district court for the city and county of Denver:

(a) On application of any voting member entitled to participate in an annual meeting if an annual meeting was required to be held and was not held within the earlier of six months after the close of the nonprofit corporation's most recently ended fiscal year or fifteen months after its last annual meeting; or

(b) On application of any person who participated in a call of or demand for a special meeting effective under section 7-127-102 (1), if:

(I) Notice of the special meeting was not given within thirty days after the date of the call or the date the last of the demands necessary to require the calling of the meeting was received by the nonprofit corporation pursuant to section 7-127-102 (1) (b), as the case may be; or

(II) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the members entitled to participate in the meeting, fix a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the notice of the meeting, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary or appropriate to accomplish the holding of the meeting.

§ 7-127-104, C.R.S. Notice of meeting.

(1) A nonprofit corporation shall give to each member entitled to vote at the meeting notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(2) Any notice that conforms to the requirements of subsection (3) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered.

(3) Notice is fair and reasonable if:

(a) The nonprofit corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten days, or if notice is mailed by other than first class or registered mail, no fewer than thirty days, nor more than sixty days before the meeting date, and if notice is given by newspaper as provided in section 7-121-402 (2), the notice must be published five separate times with the first such publication no more than sixty days, and the last such publication no fewer than ten days, before the meeting date.

(b) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members or for which the members' approval is sought

under sections 7-128-501, 7-129-110, 7-130-103, 7-130-201, 7-131-102, 7-132-102, and 7-134-102; and

(c) Unless otherwise provided by articles 121 to 137 of this title or the bylaws, notice of a special meeting includes a description of the purpose or purposes for which the meeting is called.

(4) Unless otherwise provided by the bylaws, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 7-127-106, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(5) When giving notice of an annual, regular, or special meeting of members, a nonprofit corporation shall give notice of a matter a member intends to raise at the meeting if:

(a) Requested in writing to do so by a person entitled to call a special meeting; and

(b) The request is received by the secretary or president of the nonprofit corporation at least ten days before the nonprofit corporation gives notice of the meeting.

§ 7-127-105, C.R.S. Waiver of notice.

(1) A member may waive any notice required by articles 121 to 137 of this title or by the bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. The waiver shall be in writing, be signed by the member entitled to the notice, and be delivered to the nonprofit corporation for inclusion in the minutes or filing with the corporate records, but such delivery and filing shall not be conditions of the effectiveness of the waiver.

(2) A member's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice; and

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

§ 7-127-106, C.R.S. Record date – determining members entitled to notice and vote.

(1) The bylaws may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board of directors may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held are entitled to notice of the meeting.

(2) The bylaws may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(3) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as the record date. If no such record date is fixed, members at the close of

business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

(4) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members occurs.

(5) A determination of members entitled to notice of or to vote at a meeting of members is effective for any adjournment of the meeting unless the board of directors fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the record date for determining members entitled to notice of the original meeting.

(6) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

§ 7-127-107, C.R.S. Action without meeting.

(1) Unless otherwise provided by the bylaws, any action required or permitted by articles 121 to 137 of this title to be taken at a members' meeting may be taken without a meeting if members entitled to vote thereon unanimously agree and consent to such action in writing.

(2) No action taken pursuant to this section shall be effective unless writings describing and consenting to the action, signed by members sufficient under subsection (1) of this section to take the action and not revoked pursuant to subsection (3) of this section, are received by the nonprofit corporation within sixty days after the date the earliest dated writing describing and consenting to the action is received by the nonprofit corporation. Unless otherwise provided by the bylaws, any such writing may be received by the nonprofit corporation by electronically transmitted facsimile or other form of wire or wireless communication providing the nonprofit corporation with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the nonprofit corporation, unless the writings describing and consenting to the action state a different effective date.

(3) Any member who has signed a writing describing and consenting to action taken pursuant to this section may revoke such consent by a writing signed and dated by the member describing the action and stating that the member's prior consent thereto is revoked, if such writing is received by the nonprofit corporation before the last writing necessary to effect the action is received by the nonprofit corporation.

(4) Subject to subsection (8) of this section, the record date for determining members entitled to take action without a meeting or entitled to be given notice under subsection (7) of this section of action so taken is the date a writing upon which the action is taken pursuant to subsection (1) of this section is first received by the nonprofit corporation.

(5) Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document.

(6) In the event voting members are entitled to vote cumulatively in the election of directors, voting members may take action under this section to elect or remove directors only pursuant to section 7-127-208 and only if the required signed writings describing and consenting to the election or removal of the directors are received by the nonprofit corporation.

(7) In the event action is taken under subsection (1) of this section with less than unanimous consent of all members entitled to vote upon the action, the nonprofit corporation or the members taking the action shall, promptly after all of the writings necessary to effect the action have been received by the nonprofit corporation, give notice of such action to all members who were entitled to vote upon the action. The notice shall contain or be accompanied by the same material, if any, that under articles 121 to 137 of this title would have been required to be given

to members in or with a notice of the meeting at which the action would have been submitted to the members for action.

(8) The district court for the county in this state in which the street address of the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located or, if the nonprofit corporation has no registered agent, the district court for the city and county of Denver may, upon application of the nonprofit corporation or any member who would be entitled to vote on the action at a members' meeting, summarily state a record date for determining members entitled to sign writings consenting to an action under this section and may enter other orders necessary or appropriate to effect the purposes of this section.

(9) All signed written instruments necessary for any action taken pursuant to this section shall be filed with the minutes of the meetings of the members.

§ 7-127-108, C.R.S. Meetings by telecommunication.

Unless otherwise provided in the bylaws, any or all of the members may participate in an annual, regular, or special meeting of the members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

§ 7-127-109, C.R.S. Action by written ballot.

(1) Unless otherwise provided by the bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot shall:

  (a) State each proposed action; and

  (b) Provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot shall:

  (a) Indicate the number of responses needed to meet the quorum requirements;

  (b) State the percentage of approvals necessary to approve each matter other than election of directors;

  (c) State the time by which a ballot must be received by the nonprofit corporation in order to be counted; and

  (d) Be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter.

(5) Unless otherwise provided by the bylaws, a written ballot may not be revoked.

(6) Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document.

§ 7-127-201, C.R.S. Members list for meeting and action by written ballot.

(1) Unless otherwise provided by the bylaws, after fixing a record date for a notice of a meeting or for determining the members entitled to take action by written ballot, a nonprofit corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of,

and to vote at, the meeting or to take such action by written ballot. The list shall show the address of each member entitled to notice of, and to vote at, the meeting or to take such action by written ballot and the number of votes each member is entitled to vote at the meeting or by written ballot.

(2) If prepared in connection with a meeting of the members, the members list shall be available for inspection by any member entitled to vote at the meeting, beginning the earlier of ten days before the meeting for which the list was prepared or two business days after notice of the meeting is given and continuing through the meeting, and any adjournment thereof, at the nonprofit corporation's principal office or at a place identified in the notice of the meeting in the city where the meeting will be held. The nonprofit corporation shall make the members list available at the meeting, and any member entitled to vote at the meeting or an agent or attorney of a member entitled to vote at the meeting is entitled to inspect the list at any time during the meeting or any adjournment. If prepared in connection with action to be taken by the members by written ballot, the members list shall be available for inspection by any member entitled to cast a vote by such written ballot, beginning on the date that the first written ballot is delivered to the members and continuing through the time when such written ballots must be received by the nonprofit corporation in order to be counted, at the nonprofit corporation's principal office. A member entitled to vote at the meeting or by such written ballot, or an agent or attorney of a member entitled to vote at the meeting or by such written ballot, is entitled on written demand to inspect and, subject to the requirements of section 7-136-102 (3) and the provisions of section 7-136-103 (2) and (3), to copy the list, during regular business hours, at the member's expense, and during the period it is available for inspection.

(3) If the nonprofit corporation refuses to allow a member entitled to vote at the meeting or by such written ballot, or an agent or attorney of a member entitled to vote at the meeting or by such written ballot, to inspect the members list or to copy the list during the period it is required to be available for inspection under subsection (2) of this section, the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located, or if the nonprofit corporation has no registered agent in this state, the district court for the city and county of Denver may, on application of the member, summarily order the inspection or copying of the list at the nonprofit corporation's expense and may postpone or adjourn the meeting for which the list was prepared, or postpone the time when the nonprofit corporation must receive written ballots in connection with which the list was prepared, until the inspection or copying is complete.

(4) If a court orders inspection or copying of the list of members pursuant to subsection (3) of this section, unless the nonprofit corporation proves that it refused inspection or copying of the list in good faith because it had a reasonable basis for doubt about the right of the member or the agent or attorney of the member to inspect or copy the list of members:

   (a) The court shall also order the nonprofit corporation to pay the member's costs, including reasonable counsel fees, incurred in obtaining the order;

   (b) The court may order the nonprofit corporation to pay the member for any damages the member incurred; and

   (c) The court may grant the member any other remedy afforded the member by law.

(5) If a court orders inspection or copying of the list of members pursuant to subsection (3) of this section, the court may impose reasonable restrictions on the use or distribution of the list by the member.

(6) Failure to prepare or make available the list of members does not affect the validity of action taken at the meeting or by means of such written ballot.

§ 7-127-202, C.R.S. Voting entitlement generally.

(1) Unless otherwise provided by the bylaws:

(a) Only voting members shall be entitled to vote with respect to any matter required or permitted under articles 121 to 137 of this title to be submitted to a vote of the members;

(b) All references in articles 121 to 137 of this title to votes of or voting by the members shall be deemed to permit voting only by the voting members; and

(c) Voting members shall be entitled to vote with respect to all matters required or permitted under articles 121 to 137 of this title to be submitted to a vote of the members.

(2) Unless otherwise provided by the bylaws, each member entitled to vote shall be entitled to one vote on each matter submitted to a vote of members.

(3) Unless otherwise provided by the bylaws, if a membership stands of record in the names of two or more persons, their acts with respect to voting shall have the following effect:

(a) If only one votes, such act binds all; and

(b) If more than one votes, the vote shall be divided on a pro rata basis.

§ 7-127-203, C.R.S. Proxies.

(1) Unless otherwise provided by the bylaws, a member entitled to vote may vote or otherwise act in person or by proxy.

(2) Without limiting the manner in which a member may appoint a proxy to vote or otherwise act for the member, the following shall constitute valid means of such appointment:

(a) A member may appoint a proxy by signing an appointment form, either personally or by the member's attorney-in-fact.

(b) A member may appoint a proxy by transmitting or authorizing the transmission of a telegram, teletype, or other electronic transmission providing a written statement of the appointment to the proxy, to a proxy solicitor, proxy support service organization, or other person duly authorized by the proxy to receive appointments as agent for the proxy or to the nonprofit corporation; except that the transmitted appointment shall set forth or be transmitted with written evidence from which it can be determined that the member transmitted or authorized the transmission of the appointment.

(3) An appointment of a proxy is effective against the nonprofit corporation when received by the nonprofit corporation, including receipt by the nonprofit corporation of an appointment transmitted pursuant to paragraph (b) of subsection (2) of this section. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form.

(4) Any complete copy, including an electronically transmitted facsimile, of an appointment of a proxy may be substituted for or used in lieu of the original appointment for any purpose for which the original appointment could be used.

(5) An appointment of a proxy is revocable by the member.

(6) Appointment of a proxy is revoked by the person appointing the proxy:

(a) Attending any meeting and voting in person; or

(b) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(7) The death or incapacity of the member appointing a proxy does not affect the right of the nonprofit corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(8) Subject to section 7-127-204 and to any express limitation on the proxy's authority appearing on the appointment form, a nonprofit corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

§ 7-127-204, C.R.S. Nonprofit corporation's acceptance of votes.

(1) If the name signed on a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation corresponds to the name of a member, the nonprofit corporation, if acting in good faith, is entitled to accept the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation and to give it effect as the act of the member.

(2) If the name signed on a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation does not correspond to the name of a member, the nonprofit corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation and to give it effect as the act of the member if:

(a) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the nonprofit corporation requests, evidence of fiduciary status acceptable to the nonprofit corporation has been presented with respect to the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the nonprofit corporation requests, evidence of this status acceptable to the nonprofit corporation has been presented with respect to the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and, if the nonprofit corporation requests, evidence acceptable to the nonprofit corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation;

(e) Two or more persons are the member as cotenants or fiduciaries and the name signed purports to be the name of at least one of the cotenants or fiduciaries and the person signing appears to be acting on behalf of all the cotenants or fiduciaries; or

(f) The acceptance of the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation is otherwise proper under rules established by the nonprofit corporation that are not inconsistent with the provisions of this subsection (2).

(3) The nonprofit corporation 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 member.

(4) The nonprofit corporation 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.

(5) Corporate action 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.

§ 7-127-205, C.R.S. Quorum and voting requirements for voting groups.

(1) Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter. Unless otherwise provided in articles 121 to 137 of this title or the bylaws, twenty-five percent of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a member is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless otherwise provided in the bylaws or unless a new record date is or shall be set for that adjourned meeting.

(3) If a quorum exists, action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action, unless a greater number of affirmative votes is required by articles 121 to 137 of this title or the bylaws.

(4) An amendment to the articles of incorporation or the bylaws adding, changing, or deleting a quorum or voting requirement for a voting group greater than that specified in subsection (1) or (3) of this section is governed by section 7-127-207 (2).

(5) The election of directors is governed by section 7-127-208.

§ 7-127-206, C.R.S. Action by single and multiple voting groups.

(1) If articles 121 to 137 of this title or the bylaws provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 7-127-205.

(2) If articles 121 to 137 of this title or the bylaws provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 7-127-205. One voting group may vote on a matter even though no action is taken by another voting group entitled to vote on the matter.

§ 7-127-207, C.R.S. Lesser or greater quorum or greater voting requirements.

(1) The bylaws may provide for a lesser or a greater quorum requirement, or a greater voting requirement for members or voting groups than is provided for by articles 121 to 137 of this title.

(2) An amendment to the articles of incorporation or the bylaws that adds, changes, or deletes a lesser or a greater quorum requirement or a greater voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

§ 7-127-208, C.R.S. Voting for directors – cumulative voting.

(1) If the bylaws provide for cumulative voting for directors by the voting members, voting members may so vote, by multiplying the number of votes the voting members are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

(2) Cumulative voting is not authorized at a particular meeting unless:

(a) The meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(b) A voting member gives notice during the meeting and before the vote is taken of the voting member's intent to cumulate votes, and if one voting member gives this notice all

other voting members participating in the election are entitled to cumulate their votes without giving further notice.

(3) If cumulative voting is in effect, a director may not be removed if the number of votes cast against such removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election for such director.

(4) Members may not vote cumulatively if the directors and members are identical.

(5) In an election of multiple directors, that number of candidates equaling the number of directors to be elected, having the highest number of votes cast in favor of their election, are elected to the board of directors. When only one director is being voted upon, the affirmative vote of a majority of the members constituting a quorum at the meeting at which the election occurs shall be required for election to the board of directors.

§ 7-127-209, C.R.S. Other methods of electing directors.

(1) A nonprofit corporation may provide in its bylaws for election of directors by voting members or delegates:

(a) On the basis of chapter or other organizational unit;

(b) By region or other geographic unit;

(c) By preferential voting; or

(d) By any other reasonable method.

§ 7-127-301, C.R.S. Voting agreements.

(1) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose.

(2) A voting agreement created under this section is specifically enforceable.

ARTICLE 128. DIRECTORS AND OFFICERS

§ 7-128-101, C.R.S. Requirement for board of directors.

(1) Unless otherwise provided in the articles of incorporation, each nonprofit corporation shall have a board of directors. The board of directors and the directors may be known by any other names designated in the bylaws.

(2) Subject to any provision stated in the articles of incorporation, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the nonprofit corporation managed under the direction of, the board of directors or such other persons as the articles of incorporation provide shall have the authority and perform the duties of a board of directors. To the extent the articles of incorporation provide that other persons shall have the authority and perform the duties of the board of directors, the directors shall be relieved to that extent from such authority and duties.

§ 7-128-102, C.R.S. Qualifications of directors.

A director shall be an individual. The bylaws may prescribe other qualifications for directors. A director need not be a resident of this state or a member of the nonprofit corporation unless the bylaws so prescribe.

§ 7-128-103, C.R.S. Number of directors.

(1) A board of directors shall consist of one or more directors, with the number stated in, or fixed in accordance with, the bylaws.

(2) The bylaws may establish, or permit the voting members or the board of directors to establish, a range for the size of the board of directors by fixing a minimum and maximum number of directors. If a range is established, the number of directors may be fixed or changed from time to time within the range by the voting members or the board of directors.

§ 7-128-104, C.R.S. Election, appointment, and designation of directors.

(1) All directors except the initial directors shall be elected, appointed, or designated as provided in the bylaws. If no method of election, appointment, or designation is stated in the bylaws, the directors other than the initial directors shall be elected as follows:

(a) If the nonprofit corporation has voting members, all directors except the initial directors shall be elected by the voting members at each annual meeting of the voting members; and

(b) If the nonprofit corporation does not have voting members, all directors except the initial directors shall be elected by the board of directors.

(2) The bylaws may authorize the election of all or a stated number or portion of directors, except the initial directors, by the members of one or more voting groups of voting members or by the directors of one or more authorized classes of directors. A class of voting members or directors entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

(3) The bylaws may authorize the appointment of one or more directors by such person or persons, or by the holder of such office or position, as the bylaws shall state.

(4) For purposes of articles 121 to 137 of this title, designation occurs when the bylaws name an individual as a director or designate the holder of some office or position as a director.

§ 7-128-105, C.R.S. Terms of directors generally.

(1) The bylaws may state the terms of directors. In the absence of any term stated in the bylaws, the term of each director shall be one year. Unless otherwise provided in the bylaws, directors may be elected for successive terms.

(2) Unless otherwise provided in the bylaws, the terms of the initial directors of a nonprofit corporation expire at the first meeting at which directors are elected or appointed.

(3) A decrease in the number of directors or in the term of office does not shorten an incumbent director's term.

(4) Unless otherwise provided in the bylaws, the term of a director filling a vacancy expires at the end of the unexpired term that such director is filling.

(5) Despite the expiration of a director's term, a director continues to serve until the director's successor is elected, appointed, or designated and qualifies, or until there is a decrease in the number of directors.

(6) Repealed.

§ 7-128-106, C.R.S. Staggered terms for directors.

The bylaws may provide for staggering the terms of directors by dividing the total number of directors into any number of groups. The terms of office of the several groups need not be uniform.

§ 7-128-107, C.R.S. Resignation of directors.

(1) A director may resign at any time by giving written notice of resignation to the nonprofit corporation.

(2) A resignation of a director is effective when the notice is received by the nonprofit corporation unless the notice states a later effective date.

(3) Repealed.

(4) If, at the beginning of a director's term on the board, the bylaws provide that a director may be deemed to have resigned for failing to attend a stated number of board meetings, or for failing to meet other stated obligations of directors, and if such failure to attend or meet obligations is confirmed by an affirmative vote of the board of directors, then such failure to attend or meet obligations shall be effective as a resignation at the time of such vote of the board.

§ 7-128-108, C.R.S. Removal of directors.

(1) Directors elected by voting members or directors may be removed as follows:

(a) The voting members may remove one or more directors elected by them with or without cause unless the bylaws provide that directors may be removed only for cause.

(b) If a director is elected by a voting group, only that voting group may participate in the vote to remove that director.

(c) Subject to section 7-127-208 (3), a director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) A director elected by voting members may be removed by the voting members only at a meeting called for the purpose of removing that director, and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

(e) An entire board of directors may be removed under paragraphs (a) to (d) of this subsection (1).

(f) A director elected by the board of directors may be removed with or without cause by the vote of a majority of the directors then in office or such greater number as is stated in the bylaws; except that a director elected by the board of directors to fill the vacancy of a director elected by the voting members may be removed without cause by the voting members, but not the board of directors.

(g) (Deleted by amendment, L. 2000, p. 983, § 83, effective July 1, 2000.)

(2) Unless otherwise provided in the bylaws:

(a) An appointed director may be removed without cause by the person appointing the director;

(b) The person removing the director shall do so by giving written notice of the removal to the director and to the nonprofit corporation; and

(c) A removal is effective when the notice is received by both the director to be removed and the nonprofit corporation unless the notice states a later effective date.

(3) A designated director may be removed by an amendment to the bylaws deleting or changing the designation.

(4) Repealed.

§ 7-128-109, C.R.S. Removal of directors by judicial proceeding.

(1) A director may be removed by the district court for the county in this state in which the address of the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, by the district court for the county in which the street address of its registered agent is located, or, if the nonprofit corporation has no registered agent, by the district court for the city and county of Denver, in a proceeding commenced either by the nonprofit corporation or by voting members holding at least ten percent of the votes entitled to be cast in the election of such director's successor, if the court finds that the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the nonprofit corporation, or a final judgment has been entered finding that the director has violated

a duty set forth in part 4 of this article, and that removal is in the best interests of the nonprofit corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If voting members commence a proceeding under subsection (1) of this section, they shall make the nonprofit corporation a party defendant.

(4) Repealed.

§ 7-128-110, C.R.S. Vacancy on board.

(1) Unless otherwise provided in the bylaws, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

  (a) The voting members, if any, may fill the vacancy;

  (b) The board of directors may fill the vacancy; or

  (c) If the directors remaining in office constitute fewer than a quorum of the board of directors, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Notwithstanding subsection (1) of this section, unless otherwise provided in the bylaws, if the vacant office was held by a director elected by a voting group of voting members:

  (a) If one or more of the remaining directors were elected by the same voting group of voting members, only such directors are entitled to vote to fill the vacancy if it is filled by directors, and they may do so by the affirmative vote of a majority of such directors remaining in office; and

  (b) Only that voting group is entitled to vote to fill the vacancy if it is filled by the voting members.

(3) Notwithstanding subsection (1) of this section, unless otherwise provided in the bylaws, if the vacant office was held by a director elected by a voting group of directors, and if any persons in that voting group remain as directors, only such directors are entitled to vote to fill the vacancy.

(4) Unless otherwise provided in the bylaws, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(5) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the bylaws. In the absence of an applicable bylaw provision, the vacancy may not be filled by the board.

(6) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 7-128-107 (2) or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

§ 7-128-111, C.R.S. Compensation of directors.

Unless otherwise provided in the bylaws, the board of directors may authorize and fix the compensation of directors.

§ 7-128-201, C.R.S. Meetings.

(1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless otherwise provided in the bylaws, the board of directors may permit any director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

§ 7-128-202, C.R.S. Action without meeting.

(1) Unless otherwise provided in the bylaws, any action required or permitted by articles 121 to 137 of this title to be taken at a board of directors' meeting may be taken without a meeting if notice is transmitted in writing to each member of the board and each member of the board by the time stated in the notice:

(a) Votes in writing for such action; or

(b) (I) Votes in writing against such action, abstains in writing from voting, or fails to respond or vote; and

(II) Fails to demand in writing that action not be taken without a meeting.

(2) The notice required by subsection (1) of this section shall state:

(a) The action to be taken;

(b) The time by which a director must respond;

(c) That failure to respond by the time stated in the notice will have the same effect as abstaining in writing by the time stated in the notice and failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and

(d) Any other matters the nonprofit corporation determines to include.

(3) Action is taken under this section only if, at the end of the time stated in the notice transmitted pursuant to subsection (1) of this section:

(a) The affirmative votes in writing for such action received by the nonprofit corporation and not revoked pursuant to subsection (5) of this section equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the directors then in office were present and voted; and

(b) The nonprofit corporation has not received a written demand by a director that such action not be taken without a meeting other than a demand that has been revoked pursuant to subsection (5) of this section.

(4) A director's right to demand that action not be taken without a meeting shall be deemed to have been waived unless the nonprofit corporation receives such demand from the director in writing by the time stated in the notice transmitted pursuant to subsection (1) of this section and such demand has not been revoked pursuant to subsection (5) of this section.

(5) Any director who in writing has voted, abstained, or demanded action not be taken without a meeting pursuant to this section may revoke such vote, abstention, or demand in writing received by the nonprofit corporation by the time stated in the notice transmitted pursuant to subsection (1) of this section.

(6) Unless the notice transmitted pursuant to subsection (1) of this section states a different effective date, action taken pursuant to this section shall be effective at the end of the time stated in the notice transmitted pursuant to subsection (1) of this section.

(7) A writing by a director under this section shall be in a form sufficient to inform the nonprofit corporation of the identity of the director, the vote, abstention, demand, or revocation of the director, and the proposed action to which such vote, abstention, demand, or revocation relates. Unless otherwise provided by the bylaws, all communications under this section may be transmitted or received by the nonprofit corporation by electronically transmitted facsimile, e-mail, or other form of wire or wireless communication. For purposes of this section, communications to the nonprofit corporation are not effective until received.

(8) Action taken pursuant to this section has the same effect as action taken at a meeting of directors and may be described as such in any document.

(9) All writings made pursuant to this section shall be filed with the minutes of the meetings of the board of directors.

§ 7-128-203, C.R.S. Notice of meeting – rights of residential members.

(1) Unless otherwise provided in articles 121 to 137 of this title or in the bylaws, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless otherwise required by articles 121 to 137 of this title or the bylaws.

(3) Notwithstanding subsections (1) and (2) of this section, and notwithstanding any provision of the articles of incorporation or bylaws to the contrary, the following rules and procedures apply to meetings of the board of directors of a residential nonprofit corporation or any committee of the board:

(a) (I) (A) All regular and special meetings of the residential nonprofit corporation's board of directors or executive committee, or any committee of the board that is authorized to take final action on the board's behalf, must be open to attendance by all residential members or their representatives. The board shall make agendas for meetings of the board, and agendas for meetings of committees of the board that are authorized to take final action on the board's behalf, reasonably available for examination in advance by all residential members or their representatives. If there is no formal agenda, residential members or their representatives are nonetheless entitled to a general description of the purpose of the meeting and the subject matter that will be discussed.

(B) The board shall inform all members, at least annually, of the method by which meeting agendas and other information required by sub-subparagraph (A) of this subparagraph (I) will be provided, including the physical location of places where agendas and meeting notices may be posted or the web address where on-line postings may be made. The board shall give at least thirty days' advance notice of any change in the manner or means by which meeting information will be provided.

(II) The residential nonprofit corporation 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 corporation shall provide notice of all regular and special meetings of residential members by electronic mail to all residential members who so request and who furnish the corporation with their electronic mail addresses. Electronic notice of a special meeting must be given as soon as possible but at least twenty-four hours before the meeting.

(b) At an appropriate time determined by the board of directors, but before the board votes on an issue under discussion, the board shall permit residential members or their designated representatives to speak regarding the 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) The board of directors or any committee of the board may hold an executive or closed-door session and may restrict attendance to board members and such other persons requested by the board during a regular or specially announced meeting or a part thereof. The matters to be discussed at such an executive session may include only matters enumerated in paragraph (d) of this subsection (3).

(d) Matters for discussion by an executive or closed session are limited to:

(I) Matters pertaining to employees of the residential nonprofit corporation or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the corporation;

(II) 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;

(III) Investigative proceedings concerning possible or actual criminal misconduct;

(IV) Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;

(V) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;

(VI) Review of or discussion relating to any written or oral communication from legal counsel.

(e) Upon the final resolution of any matter for which the board of directors 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.

(f) Before the board of directors or any committee of the board convenes in executive session, the chair of the body shall announce the general matter of discussion as enumerated in paragraph (d) of this subsection (3).

(g) The board of directors shall not adopt any change to the residential nonprofit corporation's articles of incorporation or bylaws during an executive session. An articles of incorporation or bylaw change may be validly adopted only during a regular or special meeting or after the board of directors goes back into regular session following an executive session.

(h) The minutes of all meetings at which an executive session was held must indicate that an executive session was held and the general subject matter of the executive session.

§ 7-128-204, C.R.S. Waiver of notice.

(1) A director may waive any notice of a meeting before or after the time and date of the meeting stated in the notice. Except as provided by subsection (2) of this section, the waiver shall be in writing and signed by the director entitled to the notice. Such waiver shall be delivered to the nonprofit corporation for filing with the corporate records, but such delivery and filing shall not be conditions of the effectiveness of the waiver.

(2) A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless:

(a) At the beginning of the meeting or promptly upon the director's later arrival, the director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and does not thereafter vote for or assent to action taken at the meeting; or

(b) If special notice was required of a particular purpose pursuant to section 7-128-203 (2), the director objects to transacting business with respect to the purpose for which such special notice was required and does not thereafter vote for or assent to action taken at the meeting with respect to such purpose.

§ 7-128-205, C.R.S. Quorum and voting.

(1) Unless a greater or lesser number is required by the bylaws, a quorum of a board of directors consists of a majority of the number of directors in office immediately before the meeting begins.

(2) The bylaws may authorize a quorum of a board of directors to consist of:

(a) No fewer than one-third of the number of directors fixed if the corporation has a fixed board size; or

(b) No fewer than one-third of the number of directors fixed or, if no number is fixed, of the number in office immediately before the meeting begins, if a range for the size of the board is established pursuant to section 7-128-103 (2).

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the vote of a greater number of directors is required by articles 121 to 137 of this title or the bylaws.

(4) If provided in the bylaws, for purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a director may be deemed to be present at a meeting and to vote if the director has granted a signed written proxy to another director who is present at the meeting, authorizing the other director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in this subsection (4) and as permitted by section 7-128-202, directors may not vote or otherwise act by proxy.

(5) A director who is present at a meeting of the board of directors when corporate action is taken is deemed to have assented to all action taken at the meeting unless:

(a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting;

(b) The director contemporaneously requests that the director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or

(c) The director causes written notice of the director's dissent or abstention as to any specific action to be received by the presiding officer of the meeting before adjournment of the meeting or by the nonprofit corporation promptly after adjournment of the meeting.

(6) The right of dissent or abstention pursuant to subsection (5) of this section as to a specific action is not available to a director who votes in favor of the action taken.

§ 7-128-206, C.R.S. Committees of the board.

(1) Unless otherwise provided in the bylaws and subject to the provisions of section 7-129-106, the board of directors may create one or more committees of the board and appoint one or more directors to serve on them.

(2) Unless otherwise provided in the bylaws, the creation of a committee of the board and appointment of directors to it shall be approved by the greater of a majority of all the directors in office when the action is taken or the number of directors required by the bylaws to take action under section 7-128-205.

(3) Unless otherwise provided in the bylaws, sections 7-128-201 to 7-128-205, which govern meetings, action without meeting, notice, waiver of notice, and quorum and voting requirements of the board of directors, apply to committees of the board and their members as well.

(4) To the extent stated in the bylaws or by the board of directors, each committee of the board shall have the authority of the board of directors under section 7-128-101; except that a committee of the board shall not:

(a) Authorize distributions;

(b) Approve or propose to members action that articles 121 to 137 of this title require to be approved by members;

(c) Elect, appoint, or remove any director;

(d) Amend articles of incorporation pursuant to section 7-130-102;

(e) Adopt, amend, or repeal bylaws;

(f) Approve a plan of conversion or plan of merger not requiring member approval; or

(g) Approve a sale, lease, exchange, or other disposition of all, or substantially all, of its property, with or without goodwill, otherwise than in the usual and regular course of business subject to approval by members.

(5) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 7-128-401.

(6) Nothing in this part 2 shall prohibit or restrict a nonprofit corporation from establishing in its bylaws or by action of the board of directors or otherwise one or more committees, advisory boards, auxiliaries, or other bodies of any kind, having such members and rules of procedure as the bylaws or board of directors may provide, in order to provide such advice, service, and assistance to the nonprofit corporation, and to carry out such duties and responsibilities for the nonprofit corporation, as may be stated in the bylaws or by the board of directors; except that, if any such committee or other body has one or more members thereof who are entitled to vote on committee matters and who are not then also directors, such committee or other body may not exercise any power or authority reserved to the board of directors in articles 121 to 137 of this title, in the articles of incorporation, or in the bylaws.

§ 7-128-301, C.R.S. Officers.

(1) Unless otherwise provided in the bylaws, a nonprofit corporation shall have a president, a secretary, a treasurer, and such other officers as may be designated by the board of directors. An officer shall be an individual who is eighteen years of age or older. An officer need not be a director or a member of the nonprofit corporation, unless the bylaws so prescribe.

(2) Officers may be appointed by the board of directors or in such other manner as the board of directors or bylaws may provide. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to the secretary or to one or more other persons responsibility for the preparation and maintenance of minutes of the directors' and members' meetings and other records and information required to be kept by the nonprofit corporation under section 7-136-101 and for authenticating records of the nonprofit corporation.

(4) The same individual may simultaneously hold more than one office in the nonprofit corporation.

§ 7-128-302, C.R.S. Duties of officers.

Each officer shall have the authority and shall perform the duties stated with respect to such office in the bylaws or, to the extent not inconsistent with the bylaws, prescribed with respect to such office by the board of directors or by an officer authorized by the board of directors.

§ 7-128-303, C.R.S. Resignation and removal of officers.

(1) An officer may resign at any time by giving written notice of resignation to the nonprofit corporation.

(2) A resignation of an officer is effective when the notice is received by the nonprofit corporation unless the notice states a later effective date.

(3) If a resignation is made effective at a later date, the board of directors may permit the officer to remain in office until the effective date and may fill the pending vacancy before the effective date with the provision that the successor does not take office until the effective date, or the board of directors may remove the officer at any time before the effective date and may fill the resulting vacancy.

(4) Unless otherwise provided in the bylaws, the board of directors may remove any officer at any time with or without cause. The bylaws or the board of directors may make provisions for the removal of officers by other officers or by the voting members.

(5) Repealed.

§ 7-128-304, C.R.S. Contract rights with respect to officers.

(1) The appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the nonprofit corporation. An officer's resignation does not affect the nonprofit corporation's contract rights, if any, with the officer.

§ 7-128-401, C.R.S. General standards of conduct for directors and officers.

(1) Each director shall discharge the director's duties as a director, including the director's duties as a member of a committee of the board, and each officer with discretionary authority shall discharge the officer's duties under that authority:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation.

(2) In discharging duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the nonprofit corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, a public accountant, or another person as to matters the director or officer reasonably believes are within such person's professional or expert competence;

(c) Religious authorities or ministers, priests, rabbis, or other persons whose position or duties in the nonprofit corporation, or in a religious organization with which the nonprofit corporation is affiliated, the director or officer believes justify reliance and confidence and who the director or officer believes to be reliable and competent in the matters presented; or

(d) In the case of a director, a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director or officer is not acting in good faith if the director or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director or officer is not liable as such to the nonprofit corporation or its members for any action taken or omitted to be taken as a director or officer, as the case may be, if, in connection with such action or omission, the director or officer performed the duties of the position in compliance with this section.

(5) A director, regardless of title, shall not be deemed to be a trustee with respect to the nonprofit corporation or with respect to any property held or administered by the nonprofit corporation

including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property.

(6) A director or officer of a nonprofit corporation, in the performance of duties in that capacity, shall not have any fiduciary duty to any creditor of the nonprofit corporation arising only from the status as a creditor.

(7) No person shall be liable in contract or tort merely by reason of being a director, officer, or member of a nonprofit corporation that was suspended, declared defunct, administratively dissolved, or dissolved by operation of law, and the business or activities of which have been continued for nonprofit purposes, with or without knowledge of the suspension, declaration, or dissolution, and the business and activities of which have not been wound up.

§ 7-128-402, C.R.S. Limitation of certain liabilities of directors and officers.

(1) If so provided in the articles of incorporation, the nonprofit corporation shall eliminate or limit the personal liability of a director to the nonprofit corporation or to its members for monetary damages for breach of fiduciary duty as a director; except that any such provision shall not eliminate or limit the liability of a director to the nonprofit corporation or to its members for monetary damages for any breach of the director's duty of loyalty to the nonprofit corporation or to its members, acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, acts specified in section 7-128-403 or 7-128-501 (2), or any transaction from which the director directly or indirectly derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director to the nonprofit corporation or to its members for monetary damages for any act or omission occurring before the date when such provision becomes effective.

(2) No director or officer shall be personally liable for any injury to person or property arising out of a tort committed by an employee unless such director or officer was personally involved in the situation giving rise to the litigation or unless such director or officer committed a criminal offense in connection with such situation. The protection afforded in this subsection (2) shall not restrict other common law protections and rights that a director or officer may have. This subsection (2) shall not restrict the nonprofit corporation's right to eliminate or limit the personal liability of a director to the nonprofit corporation or to its members for monetary damages for breach of fiduciary duty as a director as provided in subsection (1) of this section.

§ 7-128-403, C.R.S. Liability of directors for unlawful distributions.

(1) A director who votes for or assents to a distribution made in violation of section 7-133-101 or the articles of incorporation is personally liable to the nonprofit corporation for the amount of the distribution that exceeds what could have been distributed without violating said section or the articles of incorporation if it is established that the director did not perform the director's duties in compliance with section 7-128-401. In any proceeding commenced under this section, a director shall have all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each person who accepted the distribution knowing the distribution was made in violation of section 7-133-101 or the articles of incorporation, the amount of the contribution from such person being the amount of the distribution to that person that exceeds what could have been distributed to that person without violating section 7-133-101 or the articles of incorporation.

§ 7-128-501, C.R.S. Conflicting interest transaction.

(1) As used in this section, "conflicting interest transaction" means: A contract, transaction, or other financial relationship between a nonprofit corporation and a director of the nonprofit corporation, or between the nonprofit corporation and a party related to a director, or between the nonprofit corporation and an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest.

(2) No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof.

(3) No conflicting interest transaction shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the nonprofit corporation, solely because the conflicting interest transaction involves a director of the nonprofit corporation or a party related to a director or an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest or solely because the director is present at or participates in the meeting of the nonprofit corporation's board of directors or of the committee of the board of directors that authorizes, approves, or ratifies the conflicting interest transaction or solely because the director's vote is counted for such purpose if:

   (a) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum; or

   (b) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the members entitled to vote thereon, and the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote thereon; or

   (c) The conflicting interest transaction is fair as to the nonprofit corporation.

(4) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes, approves, or ratifies the conflicting interest transaction.

(5) For purposes of this section, a "party related to a director" shall mean a spouse, a descendent, an ancestor, a sibling, the spouse or descendent of a sibling, an estate or trust in which the director or a party related to a director has a beneficial interest, or an entity in which a party related to a director is a director, officer, or has a financial interest.

ARTICLE 129. INDEMNIFICATION

§ 7-129-101, C.R.S. Indemnification definitions.

As used in this article:

(1) "Director" means an individual who is or was a director of a nonprofit corporation or an individual who, while a director of a nonprofit corporation, is or was serving at the nonprofit corporation's request as a director, officer, partner, member, manager, trustee, employee, fiduciary, or agent of another domestic or foreign entity or of an employee benefit plan. A director is considered to be serving an employee benefit plan at the nonprofit corporation's request if the director's duties to the nonprofit corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a deceased director.

(2) "Expenses" includes counsel fees.

(3) "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses.

(4) "Nonprofit corporation" includes any domestic or foreign entity that is a predecessor of a nonprofit corporation by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(5) "Official capacity" means, when used with respect to a director, the office of director in a nonprofit corporation and, when used with respect to a person other than a director as contemplated in section 7-129-107, the office in a nonprofit corporation held by the officer or the employment, fiduciary, or agency relationship undertaken by the employee, fiduciary, or agent on behalf of the nonprofit corporation. "Official capacity" does not include service for any other domestic or foreign corporation, nonprofit corporation, or other person or employee benefit plan.

(6) "Party" includes a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

§ 7-129-102, C.R.S. Authority to indemnify directors.

(1) Except as provided in subsection (4) of this section, a nonprofit corporation may indemnify a person made a party to a proceeding because the person is or was a director against liability incurred in the proceeding if:

  (a) The person's conduct was in good faith; and

  (b) The person reasonably believed:

    (I) In the case of conduct in an official capacity with the nonprofit corporation, that the conduct was in the nonprofit corporation's best interests; and

    (II) In all other cases, that the conduct was at least not opposed to the nonprofit corporation's best interests; and

  (c) In the case of any criminal proceeding, the person had no reasonable cause to believe the conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in or beneficiaries of the plan is conduct that satisfies the requirement of subparagraph (II) of paragraph (b) of subsection (1) of this section. A director's conduct with respect to an employee benefit plan for a purpose that the director did not reasonably believe to be in the interests of the participants in or beneficiaries of the plan shall be deemed not to satisfy the requirements of paragraph (a) of subsection (1) of this section.

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(4) A nonprofit corporation may not indemnify a director under this section:

  (a) In connection with a proceeding by or in the right of the nonprofit corporation in which the director was adjudged liable to the nonprofit corporation; or

  (b) In connection with any other proceeding charging that the director derived an improper personal benefit, whether or not involving action in an official capacity, in which proceeding the director was adjudged liable on the basis that the director derived an improper personal benefit.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the nonprofit corporation is limited to reasonable expenses incurred in connection with the proceeding.

§ 7-129-103, C.R.S. Mandatory indemnification of directors.

Unless limited by its articles of incorporation, a nonprofit corporation shall indemnify a person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a director, against reasonable expenses incurred by the person in connection with the proceeding.

§ 7-129-104, C.R.S. Advance of expenses to directors.

(1) A nonprofit corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) The director furnishes to the nonprofit corporation a written affirmation of the director's good-faith belief that the director has met the standard of conduct described in section 7-129-102;

(b) The director furnishes to the nonprofit corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(c) A determination is made that the facts then known to those making the determination would not preclude indemnification under this article.

(2) The undertaking required by paragraph (b) of subsection (1) of this section shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in section 7-129-106.

§ 7-129-105, C.R.S. Court-ordered indemnification of directors.

(1) Unless otherwise provided in the articles of incorporation, a director who is or was a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the following manner:

(a) If it determines that the director is entitled to mandatory indemnification under section 7-129-103, the court shall order indemnification, in which case the court shall also order the nonprofit corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification.

(b) If it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 7-129-102 (1) or was adjudged liable in the circumstances described in section 7-129-102 (4), the court may order such indemnification as the court deems proper; except that the indemnification with respect to any proceeding in which liability shall have been adjudged in the circumstances described in section 7-129-102 (4) is limited to reasonable expenses incurred in connection with the proceeding and reasonable expenses incurred to obtain court-ordered indemnification.

§ 7-129-106, C.R.S. Determination and authorization of indemnification of directors.

(1) A nonprofit corporation may not indemnify a director under section 7-129-102 unless authorized in the specific case after a determination has been made that indemnification of the

director is permissible in the circumstances because the director has met the standard of conduct set forth in section 7-129-102. A nonprofit corporation shall not advance expenses to a director under section 7-129-104 unless authorized in the specific case after the written affirmation and undertaking required by section 7-129-104 (1) (a) and (1) (b) are received and the determination required by section 7-129-104 (1) (c) has been made.

(2) The determinations required by subsection (1) of this section shall be made:

(a) By the board of directors by a majority vote of those present at a meeting at which a quorum is present, and only those directors not parties to the proceeding shall be counted in satisfying the quorum; or

(b) If a quorum cannot be obtained, by a majority vote of a committee of the board of directors designated by the board of directors, which committee shall consist of two or more directors not parties to the proceeding; except that directors who are parties to the proceeding may participate in the designation of directors for the committee.

(3) If a quorum cannot be obtained as contemplated in paragraph (a) of subsection (2) of this section, and a committee cannot be established under paragraph (b) of subsection (2) of this section, or, even if a quorum is obtained or a committee is designated, if a majority of the directors constituting such quorum or such committee so directs, the determination required to be made by subsection (1) of this section shall be made:

(a) By independent legal counsel selected by a vote of the board of directors or the committee in the manner specified in paragraph (a) or (b) of subsection (2) of this section or, if a quorum of the full board cannot be obtained and a committee cannot be established, by independent legal counsel selected by a majority vote of the full board of directors; or

(b) By the voting members, but voting members who are also directors and who are at the time seeking indemnification may not vote on the determination.

(4) Authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible; except that, if the determination that indemnification or advance of expenses is permissible is made by independent legal counsel, authorization of indemnification and advance of expenses shall be made by the body that selected such counsel.

§ 7-129-107, C.R.S. Indemnification of officers, employees, fiduciaries, and agents.

(1) Unless otherwise provided in the articles of incorporation:

(a) An officer is entitled to mandatory indemnification under section 7-129-103, and is entitled to apply for court-ordered indemnification under section 7-129-105, in each case to the same extent as a director;

(b) A nonprofit corporation may indemnify and advance expenses to an officer, employee, fiduciary, or agent of the nonprofit corporation to the same extent as to a director; and

(c) A nonprofit corporation may also indemnify and advance expenses to an officer, employee, fiduciary, or agent who is not a director to a greater extent, if not inconsistent with public policy, and if provided for by its bylaws, general or specific action of its board of directors or voting members, or contract.

§ 7-129-108, C.R.S. Insurance.

A nonprofit corporation may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the nonprofit corporation, or who, while a director, officer, employee, fiduciary, or agent of the nonprofit corporation, is or was serving at the request of the nonprofit corporation as a director, officer, partner, member, manager, trustee, employee, fiduciary, or agent of any domestic or foreign entity or of any employee benefit plan,

against liability asserted against or incurred by the person in that capacity or arising from the person's status as a director, officer, employee, fiduciary, or agent, whether or not the nonprofit corporation would have power to indemnify the person against the same liability under section 7-129-102, 7-129-103, or 7-129-107. Any such insurance may be procured from any insurance company designated by the board of directors, whether such insurance company is formed under the law of this state or any other jurisdiction, including any insurance company in which the nonprofit corporation has an equity or any other interest through stock ownership or otherwise.

§ 7-129-109, C.R.S. Limitation of indemnification of directors.

(1) A provision treating a nonprofit corporation's indemnification of, or advance of expenses to, directors that is contained in its articles of incorporation or bylaws, in a resolution of its members or board of directors, or in a contract, except an insurance policy, or otherwise, is valid only to the extent the provision is not inconsistent with sections 7-129-101 to 7-129-108. If the articles of incorporation limit indemnification or advance of expenses, indemnification and advance of expenses are valid only to the extent not inconsistent with the articles of incorporation.

(2) Sections 7-129-101 to 7-129-108 do not limit a nonprofit corporation's power to pay or reimburse expenses incurred by a director in connection with an appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent in the proceeding.

§ 7-129-110, C.R.S. Notice to voting members of indemnification of director.

If a nonprofit corporation indemnifies or advances expenses to a director under this article in connection with a proceeding by or in the right of the nonprofit corporation, the nonprofit corporation shall give written notice of the indemnification or advance to the voting members with or before the notice of the next voting members' meeting. If the next voting member action is taken without a meeting at the instigation of the board of directors, such notice shall be given to the voting members at or before the time the first voting member signs a writing consenting to such action.

ARTICLE 130. AMENDMENT OF ARTICLES OF. INCORPORATION AND BYLAWS

§ 7-130-101, C.R.S. Authority to amend articles of incorporation.

(1) A nonprofit corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(2) A member does not have a vested property right resulting from any provision in the articles of incorporation or the bylaws, including any provision relating to management, control, purpose, or duration of the nonprofit corporation.

§ 7-130-102, C.R.S. Amendment of articles of incorporation by board of directors or incorporators.

(1) Unless otherwise provided in the articles of incorporation, the board of directors may adopt, without member approval, one or more amendments to the articles of incorporation to:

(a) Delete the statement of the names and addresses of the incorporators or of the initial directors;

(b) Delete the statement of the registered agent name and registered agent address of the initial registered agent, if a statement of change changing the registered agent name and

registered agent address of the registered agent is on file in the records of the secretary of state;

(b.4) Delete the statement of the principal office address of the initial principal office, if a statement of change changing the principal office address is on file in the records of the secretary of state;

(b.5) Delete the statement of the names and addresses of any or all of the individuals named in the articles of incorporation, pursuant to section 7-90-301 (6), as being individuals who caused the articles of incorporation to be delivered for filing;

(c) Extend the duration of the nonprofit corporation if it was incorporated at a time when limited duration was required by law;

(d) Change the domestic entity name by substituting the word "corporation", "incorporated", "company", or "limited", or an abbreviation of any such word for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution; or

(e) Make any other change expressly permitted by articles 121 to 137 of this title to be made without member action.

(2) The board of directors may adopt, without member action, one or more amendments to the articles of incorporation to change the entity name, if necessary, in connection with the reinstatement of a nonprofit corporation pursuant to part 10 of article 90 of this title.

(3) If a nonprofit corporation has no members or no members entitled to vote on amendments or no members yet admitted to membership, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the nonprofit corporation's articles of incorporation subject to any approval required pursuant to section 7-130-301. The nonprofit corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with section 7-128-203. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles of incorporation and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment shall be approved by a majority of the incorporators, until directors have been chosen, and thereafter by a majority of the directors in office at the time the amendment is adopted.

§ 7-130-103, C.R.S. Amendment of articles of incorporation by board of directors and members.

(1) Unless articles 121 to 137 of this title, the articles of incorporation, the bylaws, or the members or the board of directors acting pursuant to subsection (5) of this section require a different vote or voting by class, the board of directors or the members representing at least ten percent of all of the votes entitled to be cast on the amendment may propose an amendment to the articles of incorporation for submission to the members.

(2) For an amendment to the articles of incorporation to be adopted pursuant to subsection (1) of this section:

(a) The board of directors shall recommend the amendment to the members unless the amendment is proposed by members or unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members with the amendment; and

(b) The members entitled to vote on the amendment shall approve the amendment as provided in subsection (5) of this section.

(3) The proposing board of directors or the proposing members may condition the effectiveness of the amendment on any basis.

(4) The nonprofit corporation shall give notice, in accordance with section 7-127-104, to each member entitled to vote on the amendment of the members' meeting at which the amendment will be voted upon. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is to consider the amendment, and the notice shall contain or be accompanied by a copy or a summary of the amendment or shall state the general nature of the amendment.

(5) Unless articles 121 to 137 of this title, the articles of incorporation, bylaws adopted by the members, or the proposing board of directors or the proposing members acting pursuant to subsection (3) of this section require a greater vote, the amendment shall be approved by the votes required by sections 7-127-205 and 7-127-206 by every voting group entitled to vote on the amendment.

(6) If the board of directors or the members seek to have the amendment approved by the members by written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

§ 7-130-104, C.R.S. Voting on amendments of articles of incorporation by voting groups.

(1) Unless otherwise provided by articles 121 to 137 of this title or the articles of incorporation, if membership voting is otherwise required by articles 121 to 137 of this title, the members of a class who are entitled to vote are entitled to vote as a separate voting group on an amendment to the articles of incorporation if the amendment would:

(a) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class;

(b) Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(c) Increase or decrease the number of memberships authorized for that class;

(d) Increase the number of memberships authorized for another class;

(e) Effect an exchange, reclassification, or termination of the memberships of that class; or

(f) Authorize a new class of memberships.

(2) If a class is to be divided into two or more classes as a result of an amendment to the articles of incorporation, the amendment shall be approved by the members of each class that would be created by the amendment.

§ 7-130-105, C.R.S. Articles of amendment to articles of incorporation.

(1) A nonprofit corporation amending its articles of incorporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment stating:

(a) The domestic entity name of the nonprofit corporation; and

(b) The text of each amendment adopted.

(c) to (f) (Deleted by amendment, L. 2005, p. 1217, §24, effective October 1, 2005.)

§ 7-130-106, C.R.S. Restated articles of incorporation.

(1) The board of directors may restate the articles of incorporation at any time with or without member action. If the nonprofit corporation has no members and no directors have been elected, its incorporators may restate the articles of incorporation at any time.

(2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring member approval, it shall be adopted as provided in section 7-130-103.

(3) If the board of directors submits a restatement for member action, the nonprofit corporation shall give notice, in accordance with section 7-127-104, to each member entitled to vote on the restatement of the members' meeting at which the restatement will be voted upon. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the restatement, and the notice shall contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.

(4) A nonprofit corporation restating its articles of incorporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of restatement stating:

(a) The domestic entity name of the nonprofit corporation;

(b) The text of the restated articles of incorporation; and

(c) (Deleted by amendment, L. 2008, p. 1879, §8, effective August 5, 2008.)

(d) If the restatement was adopted by the board of directors or incorporators without member action, a statement to that effect and that member action was not required.

(5) Upon filing by the secretary of state or at any later effective date determined pursuant to section 7-90-304, restated articles of incorporation supersede the original articles of incorporation and all prior amendments to them.

§ 7-130-107, C.R.S. Amendment of articles of incorporation pursuant to reorganization.

(1) Articles of incorporation may be amended, without action by the board of directors or members, to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under a statute of this state or of the United States if the articles of incorporation after amendment contain only provisions required or permitted by section 7-122-102.

(2) For an amendment to the articles of incorporation to be made pursuant to subsection (1) of this section, an individual or individuals designated by the court shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment stating:

(a) The domestic entity name of the nonprofit corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under a specified statute of this state or of the United States.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

§ 7-130-108, C.R.S. Effect of amendment of articles of incorporation.

An amendment to the articles of incorporation does not affect any existing right of persons other than members, any cause of action existing against or in favor of the nonprofit corporation, or any proceeding to which the nonprofit corporation is a party. An amendment changing a nonprofit corporation's domestic entity name does not abate a proceeding brought by or against a nonprofit corporation in its former entity name.

§ 7-130-201, C.R.S. Amendment of bylaws by board of directors or members.

(1) The board of directors may amend the bylaws at any time to add, change, or delete a provision, unless:

(a) Articles 121 to 137 of this title or the articles of incorporation reserve such power exclusively to the members in whole or part; or

(b) A particular bylaw expressly prohibits the board of directors from doing so; or

(c) It would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

(2) The members may amend the bylaws even though the bylaws may also be amended by the board of directors. In such instance, the action shall be taken in accordance with sections 7-130-103 and 7-130-104 as if each reference therein to the articles of incorporation was a reference to the bylaws.

§ 7-130-202, C.R.S. Bylaw changing quorum or voting requirement for members.

(1) (Deleted by amendment, L. 98, p. 626, § 36, effective July 1, 1998.)

(2) A bylaw that fixes a lesser or greater quorum requirement or a greater voting requirement for members pursuant to section 7-127-207 shall not be amended by the board of directors.

§ 7-130-203, C.R.S. Bylaw changing quorum or voting requirement for directors.

(1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended:

(a) If adopted by the members, only by the members; or

(b) If adopted by the board of directors, either by the members or by the board of directors.

(2) A bylaw adopted or amended by the members that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended only by a stated vote of either the members or the board of directors.

(3) Action by the board of directors under paragraph (b) of subsection (1) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

§ 7-130-301, C.R.S. Approval by third persons.

The articles of incorporation may require an amendment to the articles of incorporation or bylaws to be approved in writing by a stated person or persons other than the board of directors. Such a provision may only be amended with the approval in writing of such person or persons.

§ 7-130-302, C.R.S. Amendment terminating members or redeeming or canceling memberships.

(1) Any amendment to the articles of incorporation or bylaws of a nonprofit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships shall meet the requirements of articles 121 to 137 of this title and this section.

(2) Before adopting a resolution proposing an amendment as described in subsection (1) of this section, the board of directors of a nonprofit corporation shall give notice of the general nature of the amendment to the members.

ARTICLE 131. MERGER

§ 7-131-101, C.R.S. Merger.

(1) One or more domestic nonprofit corporations may merge into another domestic entity if the board of directors of each nonprofit corporation that is a party to the merger and each other entity that is a party to the merger adopts a plan of merger complying with section 7-90-203.3 and the members entitled to vote thereon, if any, of each such nonprofit corporation, if required by section 7-131-102, approve the plan of merger.

(2) and (3) (Deleted by amendment, L. 2007, p. 249, §54, effective May 29, 2007.)

§ 7-131-101.5, C.R.S. Conversion.

A nonprofit corporation may convert into any form of entity permitted by section 7-90-201 if the board of directors of the nonprofit corporation adopts a plan of conversion that complies with section 7-90-201.3 and the members entitled to vote thereon, if any, if required by section 7-131-102, approve the plan of conversion.

§ 7-131-102, C.R.S. Action on plan of conversion or merger.

(1) After adopting a plan of conversion complying with section 7-90-201.3 or a plan of merger complying with section 7-90-203.3, the board of directors of the converting nonprofit corporation or the board of directors of each nonprofit corporation that is a party to the merger shall also submit the plan of conversion or plan of merger to its members, if any are entitled to vote thereon, for approval.

(2) If the nonprofit corporation does have members entitled to vote with respect to the approval of a plan of conversion or plan of merger, a plan of conversion or a plan of merger is approved by the members if:

  (a) The board of directors recommends the plan of conversion or plan of merger to the members entitled to vote thereon unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members with the plan; and

  (b) The members entitled to vote on the plan of conversion or plan of merger approve the plan as provided in subsection (7) of this section.

(3) After adopting the plan of conversion or plan of merger, the board of directors of the converting nonprofit corporation or the board of directors of each nonprofit corporation party to the merger shall submit the plan of conversion or plan of merger for written approval by any person or persons whose approval is required by a provision of the articles of incorporation of the nonprofit corporation and as recognized by section 7-130-301 for an amendment to the articles of incorporation or bylaws.

(4) If the nonprofit corporation does not have members entitled to vote on a conversion or merger, the conversion or merger shall be approved and adopted by a majority of the directors elected and in office at the time the plan of conversion or plan of merger is considered by the board of directors. In addition, the nonprofit corporation shall provide notice of any meeting of the board of directors at which such approval is to be obtained in accordance with section 7-128-203. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed conversion or merger.

(5) The board of directors may condition the effectiveness of the plan of conversion or plan of merger on any basis.

(6) The nonprofit corporation shall give notice, in accordance with section 7-127-104, to each member entitled to vote on the plan of conversion or plan of merger of the members' meeting at which the plan will be voted on. The notice shall state that the purpose, or one of the purposes,

of the meeting is to consider the plan of conversion or plan of merger, and the notice shall contain or be accompanied by a copy of the plan or a summary thereof.

(7) Unless articles 121 to 137 of this title, the articles of incorporation, bylaws adopted by the members, or the board of directors acting pursuant to subsection (5) of this section require a greater vote, the plan of conversion or plan of merger shall be approved by the votes required by sections 7-127-205 and 7-127-206 by every voting group entitled to vote on the plan of conversion or plan of merger.

(8) Separate voting by voting groups is required on a plan of conversion or plan of merger if the plan contains a provision that, if contained in an amendment to the articles of incorporation, would require action by one or more separate voting groups on the amendment.

§ 7-131-103, C.R.S. Statement of merger or conversion.

(1) After a plan of merger is approved, the surviving nonprofit corporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of merger pursuant to section 7-90-203.7. If the plan of merger provides for amendments to the articles of incorporation of the surviving nonprofit corporation, articles of amendment effecting the amendments shall be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title.

(2) (Deleted by amendment, L. 2002, p. 1856, §144, effective July 1, 2002; p. 1721, §146, effective October 1, 2002.)

(3) Repealed.

(4) After a plan of conversion is approved, the converting nonprofit corporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of conversion pursuant to section 7-90-201.7.

§ 7-131-104, C.R.S. Effect of merger or conversion.

(1) The effect of a merger shall be as provided in section 7-90-204.

(2) The effect of a conversion shall be as provided in section 7-90-202.

(3) Nothing in this title shall limit the common law powers of the attorney general concerning the merger or conversion of a nonprofit corporation.

§ 7-131-105, C.R.S. Merger with foreign entity.

(1) One or more domestic nonprofit corporations may merge with one or more foreign entities if:

(a) The merger is permitted by section 7-90-203 (2);

(b) (Deleted by amendment, L. 2007, p. 252, §59, effective May 29, 2007.)

(c) The foreign entity complies with section 7-90-203.7, if it is the surviving entity of the merger; and

(d) Each domestic nonprofit corporation complies with the applicable provisions of sections 7-131-101 and 7-131-102 and, if it is the surviving nonprofit corporation of the merger, with section 7-131-103.

(2) Upon the merger taking effect, the surviving foreign entity of a merger shall comply with section 7-90-204.5.

(3) and (4) (Deleted by amendment, L. 2006, p. 882, §82, effective July 1, 2006.)

ARTICLE 132. SALE OF PROPERTY

§ 7-132-101, C.R.S. Sale of property.

(1) Unless the bylaws otherwise provide, a nonprofit corporation may, as authorized by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of business;

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber all or substantially all of its property whether or not in the usual and regular course of business.

(2) Unless otherwise provided in the bylaws, approval by the members of a transaction described in this section is not required.

§ 7-132-102, C.R.S. Sale of property other than in regular course of activities.

(1) A nonprofit corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without its good will, other than in the usual and regular course of business on the terms and conditions and for the consideration determined by the board of directors, if the board of directors proposes and the members entitled to vote thereon approve the transaction. A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a nonprofit corporation, with or without its good will, in connection with its dissolution, other than in the usual and regular course of business, and other than pursuant to a court order, shall be subject to the requirements of this section; but a sale, lease, exchange, or other disposition of all, or substantially all, of the property of a nonprofit corporation, with or without its good will, pursuant to a court order shall not be subject to the requirements of this section.

(2) If a nonprofit corporation is entitled to vote or otherwise consent, other than in the usual and regular course of its business, with respect to the sale, lease, exchange, or other disposition of all, or substantially all, of the property with or without the good will of another entity which it controls, and if the property interests held by the nonprofit corporation in such other entity constitute all, or substantially all, of the property of the nonprofit corporation, then the nonprofit corporation shall consent to such transaction only if the board of directors proposes and the members, if any are entitled to vote thereon, approve the giving of consent.

(3) For a transaction described in subsection (1) of this section or a consent described in subsection (2) of this section to be approved by the members:

(a) The board of directors shall recommend the transaction or the consent to the members unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members at a membership meeting with the submission of the transaction or consent; and

(b) The members entitled to vote on the transaction or the consent shall approve the transaction or the consent as provided in subsection (6) of this section.

(4) The board of directors may condition the effectiveness of the transaction or the consent on any basis.

(5) The nonprofit corporation shall give notice, in accordance with section 7-127-104 to each member entitled to vote on the transaction described in subsection (1) of this section or the consent described in subsection (2) of this section, of the members' meeting at which the transaction or the consent will be voted upon. The notice shall:

(a) State that the purpose, or one of the purposes, of the meeting is to consider:

(I) In the case of action pursuant to subsection (1) of this section, the sale, lease, exchange, or other disposition of all, or substantially all, of the property of the nonprofit corporation; or

(II) In the case of action pursuant to subsection (2) of this section, the nonprofit corporation's consent to the sale, lease, exchange, or other disposition of all, or substantially all, of the property of another entity, which entity shall be identified in the notice, property interests of which are held by the nonprofit corporation and constitute all, or substantially all, of the property of the nonprofit corporation; and

(b) Contain or be accompanied by a description of the transaction, in the case of action pursuant to subsection (1) of this section, or by a description of the transaction underlying the consent, in the case of action pursuant to subsection (2) of this section.

(6) Unless articles 121 to 137 of this title, the articles of incorporation, bylaws adopted by the members, or the board of directors acting pursuant to subsection (4) of this section require a greater vote, the transaction described in subsection (1) of this section or the consent described in subsection (2) of this section shall be approved by the votes required by sections 7-127-205 and 7-127-206 by every voting group entitled to vote on the transaction or the consent.

(7) After a transaction described in subsection (1) of this section or a consent described in subsection (2) of this section is authorized, the transaction may be abandoned or the consent withheld or revoked, subject to any contractual rights or other limitations on such abandonment, withholding, or revocation, without further action by the members.

(8) A transaction that constitutes a distribution is governed by article 133 and not by this section.

ARTICLE 133. DISTRIBUTIONS

§ 7-133-101, C.R.S. Distributions prohibited.

Except as authorized by section 7-133-102, a nonprofit corporation shall not make any distributions.

§ 7-133-102, C.R.S. Authorized distributions.

(1) A nonprofit corporation may:

(a) Make distributions of its income or assets to its members that are domestic or foreign nonprofit corporations;

(b) Pay compensation in a reasonable amount to its members, directors, or officers for services rendered; and

(c) Confer benefits upon its members in conformity with its purposes.

(2) Nonprofit corporations may make distributions upon dissolution in conformity with article 134 of this title.

ARTICLE 134. DISSOLUTION

§ 7-134-101, C.R.S. Dissolution by incorporators or directors if no members.

(1) If a nonprofit corporation has no members, a majority of its directors or, if there are no directors, a majority of its incorporators may authorize the dissolution of the nonprofit corporation.

(2) The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the nonprofit corporation will be distributed after all creditors have been paid.

§ 7-134-102, C.R.S. Dissolution by directors and members.

(1) Unless otherwise provided in the bylaws, dissolution of a nonprofit corporation may be authorized in the manner provided in subsection (2) of this section.

(2) For a proposal to dissolve the nonprofit corporation to be authorized:

(a) The board of directors shall adopt the proposal to dissolve;

(b) The board of directors shall recommend the proposal to dissolve to the members entitled to vote thereon unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members; and

(c) The members entitled to vote on the proposal to dissolve shall approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition the effectiveness of the dissolution, and the members may condition their approval of the dissolution, on any basis.

(4) The nonprofit corporation shall give notice, in accordance with section 7-127-104, to each member entitled to vote on the proposal of the members' meeting at which the proposal to dissolve will be voted on. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the proposal to dissolve the nonprofit corporation, and the notice shall contain or be accompanied by a copy of the proposal or a summary thereof.

(5) Unless articles 121 to 137 of this title, the articles of incorporation, bylaws adopted by the members, or the board of directors acting pursuant to subsection (3) of this section require a greater vote, the proposal to dissolve shall be approved by the votes required by sections 7-127-205 and 7-127-206 by every voting group entitled to vote on the proposal to dissolve.

(6) The plan of dissolution shall indicate to whom the assets owned or held by the nonprofit corporation will be distributed after all creditors have been paid.

§ 7-134-103, C.R.S. Articles of dissolution.

(1) At any time after dissolution is authorized, the nonprofit corporation may dissolve by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of dissolution stating:

(a) The domestic entity name of the nonprofit corporation;

(b) The principal office address of the nonprofit corporation's principal office; and

(c) That the nonprofit corporation is dissolved.

(d) to (f) (Deleted by amendment, L. 2004, p. 1513, § 305, effective July 1, 2004.)

(2) A nonprofit corporation is dissolved upon the effective date of its articles of dissolution.

(3) Articles of dissolution need not be filed by a nonprofit corporation that is dissolved pursuant to section 7-134-401.

§ 7-134-104, C.R.S. Revocation of dissolution. (Repealed)

§ 7-134-105, C.R.S. Effect of dissolution.

(1) A dissolved nonprofit corporation continues its corporate existence but may not carry on any activities except as is appropriate to wind up and liquidate its affairs, including:

(a) Collecting its assets;

(b) Returning, transferring, or conveying assets held by the nonprofit corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;

(c) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(d) Discharging or making provision for discharging its liabilities;

(e) Doing every other act necessary to wind up and liquidate its assets and affairs.

(2) Upon dissolution of a nonprofit corporation exempt under section 501 (c) (3) of the internal revenue code or corresponding section of any future federal tax code, the assets of such nonprofit corporation shall be distributed for one or more exempt purposes under said section, or to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located, or, if the nonprofit corporation has no principal office in this state, by the district court of the county in which the street address of its registered agent is located, or, if the nonprofit corporation has no registered agent, the district court of the city and county of Denver exclusively for such purposes or to such organization or organizations, as said court shall determine, that are formed and operated exclusively for such purposes.

(3) Dissolution of a nonprofit corporation does not:

(a) Transfer title to the nonprofit corporation's property;

(b) Subject its directors or officers to standards of conduct different from those prescribed in article 128 of this title;

(c) Change quorum or voting requirements for its board of directors or members, change provisions for selection, resignation, or removal of its directors or officers, or both, or change provisions for amending its bylaws or its articles of incorporation;

(d) Prevent commencement of a proceeding by or against the nonprofit corporation in its entity name; or

(e) Abate or suspend a proceeding pending by or against the nonprofit corporation on the effective date of dissolution.

(4) (Deleted by amendment, L. 2003, p. 2347, §323, effective July 1, 2004.)

(5) A dissolved nonprofit corporation may dispose of claims against it pursuant to sections 7-90-911 and 7-90-912.

§ 7-134-106, C.R.S. Disposition of known claims by notification. (Repealed)

§ 7-134-107, C.R.S. Disposition of claims by publication. (Repealed)

§ 7-134-108, C.R.S. Enforcement of claims against dissolved nonprofit corporation. (Repealed)

§ 7-134-109, C.R.S. Service on dissolved nonprofit corporation – repeal. (Repealed)

§ 7-134-201, C.R.S. Grounds for administrative dissolution. (Repealed)

§ 7-134-202, C.R.S. Procedure for and effect of administrative dissolution. (Repealed)

§ 7-134-203, C.R.S. Reinstatement following administrative dissolution – repeal. (Repealed)

§ 7-134-204, C.R.S. Appeal from denial of reinstatement – repeal. (Repealed)

§ 7-134-205, C.R.S. Continuation as unincorporated association. (Repealed)

§ 7-134-301, C.R.S. Grounds for judicial dissolution.

(1) A nonprofit corporation may be dissolved in a proceeding by the attorney general if it is established that:

(a) The nonprofit corporation obtained its articles of incorporation through fraud; or

(b) The nonprofit corporation has continued to exceed or abuse the authority conferred upon it by law.

(2) A nonprofit corporation may be dissolved in a proceeding by a director or member if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the members, if any, are unable to break the deadlock, and irreparable injury to the nonprofit corporation is threatened or being suffered;

(b) The directors or those otherwise in control of the nonprofit corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(d) The corporate assets are being misapplied or wasted.

(3) A nonprofit corporation may be dissolved in a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the nonprofit corporation is insolvent; or

(b) The nonprofit corporation is insolvent and the nonprofit corporation has admitted in writing that the creditor's claim is due and owing.

(4) (a) If a nonprofit corporation has been dissolved by voluntary action taken under part 1 of this article:

(I) The nonprofit corporation may bring a proceeding to wind up and liquidate its business and affairs under judicial supervision in accordance with section 7-134-105; and

(II) The attorney general, a director, a member, or a creditor may bring a proceeding to wind up and liquidate the affairs of the nonprofit corporation under judicial supervision in accordance with section 7-134-105, upon establishing the grounds set forth in subsections (1) to (3) of this section.

(b) As used in sections 7-134-302 to 7-134-304, a "proceeding to dissolve a nonprofit corporation" includes a proceeding brought under this subsection (4), and a "decree of dissolution" includes an order of court entered in a proceeding under this subsection (4) that directs that the affairs of a nonprofit corporation shall be wound up and liquidated under judicial supervision.

§ 7-134-302, C.R.S. Procedure for judicial dissolution.

(1) A proceeding by the attorney general to dissolve a nonprofit corporation shall be brought in the district court for the county in this state in which the street address of the nonprofit corporation's principal office or the street address of its registered agent is located or, if the nonprofit corporation has no principal office in this state and no registered agent, in the district court for the city and county of Denver. A proceeding brought by any other party named in section 7-134-301 shall be brought in the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located or, if it has no principal office in this state, in the district court for the county in which the street address of its registered agent is located, or, if the nonprofit corporation has no registered agent, in the district court for the city and county of Denver.

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a nonprofit corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a nonprofit corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the nonprofit corporation until a full hearing can be held.

§ 7-134-303, C.R.S. Receivership or custodianship.

(1) A court in a judicial proceeding to dissolve a nonprofit corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the nonprofit corporation. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the nonprofit corporation and all of its property, wherever located.

(2) The court may appoint an individual, a domestic entity, or a foreign entity authorized to transact business or conduct activities in this state, or a domestic or foreign nonprofit corporation authorized to transact business or conduct activities in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount stated by the court.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order which may be amended from time to time. Among other powers the receiver shall have the power to:

  (a) Dispose of all or any part of the property of the nonprofit corporation, wherever located, at a public or private sale, if authorized by the court; and

  (b) Sue and defend in the receiver's own name as receiver of the nonprofit corporation in all courts.

(4) The custodian may exercise all of the powers of the nonprofit corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the nonprofit corporation in the best interests of its members and creditors.

(5) The court, during a receivership, may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the nonprofit corporation and its members and creditors.

(6) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and such person's counsel from the assets of the nonprofit corporation or proceeds from the sale of the assets.

§ 7-134-304, C.R.S. Decree of dissolution.

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 7-134-301 exist, it may enter a decree dissolving the nonprofit corporation and stating the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state for filing pursuant to part 3 of article 90 of this title.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the nonprofit corporation's activities in accordance with section 7-134-105 and the giving of notice to claimants in accordance with sections 7-90-911 and 7-90-912.

(3) The court's order or decision may be appealed as in other civil proceedings.

§ 7-134-401, C.R.S. Dissolution upon expiration of period of duration.

(1) A nonprofit corporation shall be dissolved upon and by reason of the expiration of its period of duration, if any, stated in its articles of incorporation.

(2) A provision in the articles of incorporation to the effect that the nonprofit corporation or its existence shall be terminated at a stated date or after a stated period of time or upon a contingency, or any similar provision, shall be deemed to be a provision for a period of duration within the meaning of this section. The occurrence of such date, the expiration of the stated period of time, the occurrence of such contingency, or the satisfaction of such provision shall be deemed to be the expiration of the nonprofit corporation's period of duration for purposes of this section.

§ 7-134-501, C.R.S. Deposit with state treasurer.

Assets of a dissolved nonprofit corporation that should be transferred to a creditor, claimant, or member of the nonprofit corporation who cannot be found or who is not legally competent to receive them shall be reduced to cash and deposited with the state treasurer as property presumed to be abandoned under the provisions of article 13 of title 38, C.R.S.

ARTICLE 135. FOREIGN NONPROFIT CORPORATIONS -. AUTHORITY TO CONDUCT ACTIVITIES

§ 7-135-101, C.R.S. Authority to conduct activities required.

Part 8 of article 90 of this title, providing for the transaction of business or the conduct of activities by foreign entities, applies to foreign nonprofit corporations.

ARTICLE 136. RECORDS, INFORMATION, AND REPORTS

§ 7-136-101, C.R.S. Corporate records.

(1) A nonprofit corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the nonprofit corporation, and a record of all waivers of notices of meetings of members and of the board of directors or any committee of the board of directors.

(2) A nonprofit corporation shall maintain appropriate accounting records.

(3) A nonprofit corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members in alphabetical order, by class, showing the number of votes each member is entitled to vote.

(4) A nonprofit corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A nonprofit corporation shall keep a copy of each of the following records at its principal office:

   (a) Its articles of incorporation;

   (b) Its bylaws;

   (c) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

   (d) The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;

(e) All written communications within the past three years to members generally as members;

(f) A list of the names and business or home addresses of its current directors and officers;

(g) A copy of its most recent periodic report pursuant to part 5 of article 90 of this title; and

(h) All financial statements prepared for periods ending during the last three years that a member could have requested under section 7-136-106.

§ 7-136-102, C.R.S. Inspection of corporate records by members.

(1) A member is entitled to inspect and copy, during regular business hours at the nonprofit corporation's principal office, any of the records of the nonprofit corporation described in section 7-136-101 (5) if the member gives the nonprofit corporation written demand at least five business days before the date on which the member wishes to inspect and copy such records.

(2) Pursuant to subsection (5) of this section, a member is entitled to inspect and copy, during regular business hours at a reasonable location stated by the nonprofit corporation, any of the other records of the nonprofit corporation if the member meets the requirements of subsection (3) of this section and gives the nonprofit corporation written demand at least five business days before the date on which the member wishes to inspect and copy such records.

(3) A member may inspect and copy the records described in subsection (2) of this section only if:

(a) The member has been a member for at least three months immediately preceding the demand to inspect or copy or is a member holding at least five percent of the voting power as of the date the demand is made;

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

(c) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(d) The records are directly connected with the described purpose.

(4) For purposes of this section:

(a) "Member" includes a beneficial owner whose membership interest is held in a voting trust and any other beneficial owner of a membership interest who establishes beneficial ownership.

(b) "Proper purpose" means a purpose reasonably related to the demanding member's interest as a member.

(5) The right of inspection granted by this section may not be abolished or limited by the articles of incorporation or bylaws.

(6) This section does not affect:

(a) The right of a member to inspect records under section 7-127-201;

(b) The right of a member to inspect records to the same extent as any other litigant if the member is in litigation with the nonprofit corporation; or

(c) The power of a court, independent of articles 121 to 137 of this title, to compel the production of corporate records for examination.

§ 7-136-103, C.R.S. Scope of member's inspection right.

(1) A member's agent or attorney has the same inspection and copying rights as the member.

(2) The right to copy records under section 7-136-102 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means.

(3) Except as provided in section 7-136-106, the nonprofit corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the

member. The charge may not exceed the estimated cost of production and reproduction of the records.

(4) The nonprofit corporation may comply with a member's demand to inspect the record of members under section 7-136-102 (2) by furnishing to the member a list of members that complies with section 7-136-101 (3) and was compiled no earlier than the date of the member's demand.

§ 7-136-104, C.R.S. Court-ordered inspection of corporate records.

(1) If a nonprofit corporation refuses to allow a member, or the member's agent or attorney, who complies with section 7-136-102 (1) to inspect or copy any records that the member is entitled to inspect or copy by said section, the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located or, if the nonprofit corporation has no registered agent, the district court for the city and county of Denver may, on application of the member, summarily order the inspection or copying of the records demanded at the nonprofit corporation's expense.

(2) If a nonprofit corporation refuses to allow a member, or the member's agent or attorney, who complies with section 7-136-102 (2) and (3) to inspect or copy any records that the member is entitled to inspect or copy pursuant to section 7-136-102 (2) and (3) within a reasonable time following the member's demand, the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located or, if the nonprofit corporation has no registered agent, the district court for the city and county of Denver may, on application of the member, summarily order the inspection or copying of the records demanded.

(3) If a court orders inspection or copying of the records demanded, unless the nonprofit corporation proves that it refused inspection or copying in good faith because it had a reasonable basis for doubt about the right of the member, or the member's agent or attorney, to inspect or copy the records demanded:

(a) The court shall also order the nonprofit corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order;

(b) The court may order the nonprofit corporation to pay the member for any damages the member incurred;

(c) If inspection or copying is ordered pursuant to subsection (2) of this section, the court may order the nonprofit corporation to pay the member's inspection and copying expenses; and

(d) The court may grant the member any other remedy provided by law.

(4) If a court orders inspection or copying of records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

§ 7-136-105, C.R.S. Limitations on use of membership list.

(1) Without consent of the board of directors, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member.

(2) Without limiting the generality of subsection (1) of this section, without the consent of the board of directors 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 members in an election to be held by the nonprofit corporation;

(b) Used for any commercial purpose; or

(c) Sold to or purchased by any person.

§ 7-136-106, C.R.S. Financial statements.

Upon the written request of any member, a nonprofit corporation shall mail to such member its most recent annual financial statements, if any, and its most recently published financial statements, if any, showing in reasonable detail its assets and liabilities and results of its operations.

§ 7-136-107, C.R.S. Periodic report to secretary of state.

Part 5 of article 90 of this title, providing for periodic reports from reporting entities, applies to domestic nonprofit corporations and applies to foreign nonprofit corporations that are authorized to transact business or conduct activities in this state.

§ 7-136-108, C.R.S. Statement of person named as director or officer. (Repealed)

§ 7-136-109, C.R.S. Interrogatories by secretary of state. (Repealed)

ARTICLE 137. TRANSITION PROVISIONS

* ### *§ 7-137-100.3, C.R.S. Definitions.*

* As used in this article 137, unless the context otherwise requires:

* (1) "Existing corporate entity" means any corporate entity that was in existence on June 30, 1998, and that was incorporated under articles 20 to 29 of this title 7 or elected to accept such articles as provided therein..

§ 7-137-101, C.R.S. Application to existing corporations.

* (1) (a) Repealed.

(b) A corporate entity that was either incorporated under or elected to accept articles 20 to 29 of this title and that was suspended or, as a consequence of such suspension, dissolved by operation of law before July 1, 1998, and was eligible for reinstatement or restoration, renewal, and revival on June 30, 1998, shall be deemed to be in existence on that date for purposes of this subsection (1) and shall be deemed administratively dissolved on the date of such suspension for purposes of section 7-134-105.

(c) A corporate entity that was either incorporated under or elected to accept articles 20 to 29 of this title and that was suspended or, as a consequence of such suspension, dissolved by operation of law before July 1, 1998, and was not eligible for reinstatement or restoration, renewal, and revival on June 30, 1998, shall be treated as a domestic entity as to which a constituent filed document has been filed by, or placed in the records of, the secretary of state and that has been dissolved for purposes of section 7-90-1001.

(2) Subject to this section, articles 121 to 137 of this title apply to all existing corporate entities subject to articles 20 to 29 of this title.

(3) Unless the articles of incorporation or bylaws of an existing corporate entity recognize the right of a member to transfer such member's membership interests in such corporate entity, such interests shall be presumed to be nontransferable. However, if the transferability of such interests is not prohibited by such articles of incorporation or bylaws, such transferability may be established by a preponderance of the evidence taking into account any representation made by the corporate entity, the practice of such corporate entity, other transactions involving such interests, and other facts bearing on the existence of the rights to transfer such interests.

(4) Until the articles of incorporation of an existing corporate entity are amended or restated on or after July 1, 1998, they need not be amended or restated to comply with articles 121 to 137 of this title.

(5) Unless changed by an amendment to its articles of incorporation, members or classes of members of an existing corporate entity shall be deemed to be voting members for purposes of articles 121 to 137 of this title if such members or classes of members, on June 30, 1998, had the right by reason of a provision of the corporate entity's articles of incorporation or bylaws, or by a custom, practice, or tradition, to vote for the election of a director or directors.

(6) The bylaws of an existing corporate entity may be amended as provided in its articles of incorporation or bylaws. Unless otherwise so provided, the power to amend such bylaws shall be vested in the board of directors.

§ 7-137-102, C.R.S. Pre-1968 corporate entities – failure to file reports and designate registered agents – dissolution.

(1) Corporate entities that were formed prior to January 1, 1968, and that did not elect to be governed by articles 20 to 29 of this title and could, if they so elected, elect to be governed by articles 121 to 137 of this title, but that have not done so, are nevertheless reporting entities that are subject to part 5 of article 90 of this title, providing for periodic reports from reporting entities, and are domestic entities that are subject to part 7 of article 90 of this title, providing for registered agents and service of process.

(2) Every corporate entity that could or has elected to be governed by articles 20 to 29 or 121 to 137 of this title whose articles of incorporation, affidavit of incorporation, or other basic corporate charter, by whatever name denominated, is not on file in the records of the secretary of state shall file a certified copy of such articles of incorporation, affidavit of incorporation, or other basic corporate charter in the office of the secretary of state. Such certified copy may be secured from any clerk or recorder with whom the instrument may be filed or recorded.

(3) If any corporate entity, formed prior to January 1, 1968, that could elect to be governed by articles 20 to 29 or 121 to 137 of this title, but that has not so elected and has failed to file periodic reports or maintain a registered agent, may be declared delinquent pursuant to section 7-90-902.

(4) Any corporate entity formed prior to January 1, 1968, that could elect to be governed by articles 20 to 29 of this title, that was suspended or was declared defunct, but not dissolved by operation of law under section 7-20-105 before July 1, 1998, and that was eligible for reinstatement on June 30, 1998, shall be deemed administratively dissolved on the date of such suspension for purposes of section 7-134-105 and may reinstate itself as a nonprofit corporation as provided in part 10 of article 90 of this title.

(5) Any nonprofit corporate entity formed prior to January 1, 1968, that could elect to be governed by articles 20 to 29 of this title, that was suspended, declared defunct, administratively dissolved, or dissolved by operation of law, and continues to operate for nonprofit purposes and does not wind up its business and affairs, shall be deemed an unincorporated organization that qualifies as a nonprofit association as provided in section 7-30-101.1 for purposes of the "Uniform Unincorporated Nonprofit Association Act", article 30 of this title, unless such corporate entity is eligible to reinstate itself as a nonprofit corporation as provided in part 10 of article 90 of this title and does so reinstate itself.

§ 7-137-103, C.R.S. Application to foreign nonprofit corporations.

A foreign nonprofit corporation authorized to transact business or conduct activities in this state on June 30, 1998, is subject to articles 121 to 137 of this title but is not required to obtain new authorization to transact business or conduct activities under said articles.

§ 7-137-201, C.R.S. Procedure to elect to accept articles 121 to 137 of this title.

(1) Any corporate entity with shares of capital stock formed before January 1, 1968, under article 40, 50, or 51 of this title, any corporate entity formed before January 1, 1968, under article 40

or 50 of this title without shares of capital stock, and any corporate entity whether with or without shares of capital stock and formed before January 1, 1968, under any general law or created by any special act of the general assembly for a purpose for which a nonprofit corporation may be formed under articles 121 to 137 of this title may elect to accept said articles in the following manner:

(a) If there are members or stockholders entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporate entity accept articles 121 to 137 of this title 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 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 accept said articles shall be given to each member or stockholder entitled to vote at the meeting within the time and in the manner provided in said articles for the giving of notice of meetings to members or stockholders. Such election to accept said articles shall require for adoption at least two-thirds of the votes that members or stockholders present at such meeting in person or by proxy are entitled to cast.

(b) If there are no members or stockholders entitled to vote thereon, election to accept articles 121 to 137 of this title may be made at a meeting of the board of directors pursuant to a majority vote of the directors in office.

(2) In effecting acceptance of articles 121 to 137 of this title, the corporate entity shall follow the requirements of the law under which it was formed, its articles of incorporation, and its bylaws so far as applicable.

(3) If the domestic entity name of the corporate entity accepting articles 121 to 137 of this title is not in conformity with part 6 of article 90 of this title, the corporate entity shall change its domestic entity name to conform with part 6 of article 90 of this title. The adoption of a domestic entity name that is in conformity with said part 6 by the members or stockholders of the corporate entity, and its inclusion in the statement of election to accept articles 121 to 137 as the entity name, shall be the only action necessary to effect the change. The articles of incorporation, affidavit, or other basic organizational charter shall be deemed for all purposes amended to conform to the entity name.

(4) All corporate entities accepting articles 121 to 137 of this title whose articles of incorporation, affidavits of incorporation, or other basic charters, by whatever names denominated, are not on file in the records of the secretary of state as required by section 7-137-102 (2) shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a certified copy of such articles of incorporation, affidavits of incorporation, or other basic charters at the time of delivery of the statement of election to accept articles 121 to 137 of this title.

(5) All corporate entities accepting articles 121 to 137 of this title are reporting entities subject to part 5 of article 90 of this title, providing for periodic reports from reporting entities, and are subject to part 7 of article 90 of this title, providing for registered agents and service of process.

§ 7-137-202, C.R.S. Statement of election to accept articles 121 to 137 of this title.

(1) A statement of election to accept articles 121 to 137 of this title shall state:

(a) The domestic entity name of the corporate entity;

(b) A statement by the corporate entity that it has elected to accept said articles and that all required reports have been or will be filed and all fees, taxes, and penalties due to the state of Colorado accruing under any law to which the corporate entity heretofore has been subject have been paid;

(c) If there are members or stockholders entitled to vote thereon, a statement stating the date of the meeting of such members or stockholders at which the election to accept articles 121 to 137 of this title was made, that a quorum was present at the meeting, and that such acceptance was authorized by at least two-thirds of the votes that members or stockholders present at such meeting in person or by proxy were entitled to cast;

(d) If there are no members or stockholders entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which election to accept said articles was made, that a quorum was present at the meeting, and that such acceptance was authorized by a majority vote of the directors in office;

(e) A statement that the corporate entity followed the requirements of the law under which it was formed, its articles of incorporation, and its bylaws so far as applicable in effecting such acceptance;

(f) and (g) Repealed.

(h) A statement that any attached copy of the articles of incorporation, affidavit, or other basic corporate charter of the corporate entity is true and correct;

(i) If the corporate entity has issued shares of stock, a statement of such fact including the number of shares heretofore authorized, the number issued and outstanding, and a statement that all issued and outstanding shares of stock have been delivered to the corporate entity to be canceled upon the acceptance of articles 121 to 137 of this title by the corporate entity becoming effective and that from and after the effective date of said acceptance the authority of the corporate entity to issue shares of stock is terminated; except that this shall not apply to corporate entities formed for the acquisition and distribution of water to their stockholders.

§ 7-137-203, C.R.S. Filing statement of election to accept articles 121 to 137 of this title.

The statement of election to accept articles 121 to 137 of this title shall be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title.

§ 7-137-204, C.R.S. Effect of certificate of acceptance.

(1) Upon the filing by the secretary of state of the statement of election to accept articles 121 to 137 of this title, the election of the corporate entity to accept said articles shall become effective.

(2) A corporate entity so electing under articles 121 to 137 of this title or corresponding provision of prior law shall have the same powers and privileges and be subject to the same duties, restrictions, penalties, and liabilities as though such corporate entity had been originally formed under said articles and shall also be subject to any duties or obligations expressly imposed upon the corporate entity by a special charter, subject to the following:

(a) If no period of duration is expressly fixed in the articles of incorporation of such corporate entity, its period of duration shall be deemed to be perpetual.

(b) No amendment to the articles of incorporation adopted after such election to accept articles 121 to 137 of this title shall release or terminate any duty or obligation expressly imposed upon any such corporate entity under and by virtue of a special charter or enlarge any right, power, or privilege granted to any such corporate entity under a special charter, except to the extent that such right, power, or privilege might have been included in the articles of incorporation of a corporate entity formed under said articles.

(c) In the case of any corporate entity with issued shares of stock, the holders of such issued shares who surrender them to the corporate entity to be canceled upon the acceptance of said articles by the corporate entity becoming effective shall become members of the

corporate entity with one vote for each share of stock so surrendered until such time as the corporate entity by proper corporate action relative to the election, qualification, terms, and voting power of members shall otherwise prescribe.

§ 7-137-301, C.R.S. Saving provisions.

(1) Except as provided in subsection (3) of this section, the repeal of any provision of the "Colorado Nonprofit Corporation Act", articles 20 to 29 of this title, does not affect:

(a) The operation of the statute, or any action taken under it, before its repeal;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the provision before its repeal;

(c) Any violation of the provision, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or

(d) Any proceeding or reorganization commenced under the provision before its repeal, and the proceeding or reorganization may be completed in accordance with the provision as if it had not been repealed.

(2) Except as provided in subsection (3) of this section or in sections 7-137-101 (1) (b) and 7-137-102 (4) for the reinstatement, as provided in part 10 of article 90 of this title, of a corporate entity suspended, declared defunct, or administratively dissolved before July 1, 1998, any dissolution commenced under the provision before its repeal may be completed in accordance with the provision as if it had not been repealed.

(3) If a penalty or punishment imposed for violation of any provision of the "Colorado Nonprofit Corporation Act", articles 20 to 29 of this title, is reduced by articles 121 to 137 of this title, the penalty or punishment, if not already imposed, shall be imposed in accordance with said articles.