



HindmanSanchez

Court Sanctioned Amendment of Declaration Of Common Interest Communities



HindmanSanchez

Court Sanctioned Amendment Of Declarations Of Common Interest Communities

1. Colorado statutes allow Colorado District Courts a special, restricted ability to amend Declarations by court order.
2. The statute is 38-33.3-217(7), as part of CCIOA, and applies to all common interest communities, as defined in CCIOA.
3. The statute allows an association to apply to a District Court to amend its Declaration, by court order, after it has taken the following steps:
 - (a) a proposed amendment to the Declaration must be prepared;
 - (b) all owners must receive at least two notices (by any means consistent with the Colorado Revised Nonprofit Corporation Act) of the proposed amendment from the Association;
 - (c) the Association must hold at least one member meeting (called and held in accordance with the Association's governing documents) to discuss the proposed amendment;
 - (d) at least half the owners required under the existing Declaration must vote for the proposed amendment (i.e., if approval of 90% of the owners is currently required, then the procedure of petitioning a court for approval of the proposed amendment can be begun once 45% of the owners have voted for the proposed amendment).
4. Lender approval is not required to begin the petition process to the Court, even if lender approval is required by the existing Declaration.
5. With the criteria listed above met, the Association, acting through its Board of Directors, may file a petition with the court, requesting that the court approve the proposed amendment.
6. After the petition is filed, the court then sets a hearing date (no earlier than 45 days, no later than 60 days after the date the petition was filed) on the petition.
7. Within ten (10) days after the hearing date is set, the Association must send written notice of the petition and of the hearing to all owners (by means consistent with the Colorado Revised Nonprofit Corporation Act), mail or hand deliver notice to the Developer/Builder (Declarant) and send notice, by first class mail or hand delivery, to any lender who is entitled to notice of a Declaration amendment under the Declaration or any underwriting guidelines or requirements of the lender or FNMA, FHLMC, FHA, VA or GNMA.
8. The court must grant the petition and approve the proposed amendment if the Association has complied with certain requirements (however, amendments terminating the declaration or changing the allocated interests of the owners, will not be granted) and, if in response to the notice of the petition, the petition is not objected to in writing by:
 - (a) more than 33% of the owners,
 - (b) more than 33% of the eligible lenders,
 - (c) the Declarant [if such amendment eliminates any Declarant rights or privileges or if the Declarant is entitled to vote on the proposed amendment], or
 - (d) FHA or VA [if the Community has been approved by FHA or VA to allow owners to be able to obtain FHA insured loans or VA guaranteed loans].
9. The statute allowing this unique procedure, SB99-221, became law May 19, 1999.

CCIOA Provisions Allowing Court Sanctioned Amendments

38-33.3-217. Amendment of declaration. (1) (a)(I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (a), the declaration, including the plats and maps, may be amended only by the affirmative vote or agreement of unit owners of units to which more than fifty percent of the votes in the association are allocated or any larger percentage not to exceed sixty-seven percent, that the declaration specifies. Any provision in the declaration that purports to specify a percentage larger than sixty-seven percent is hereby declared void as contrary to public policy, and until amended, such provision shall be deemed to specify a percentage of sixty-seven percent. The declaration may specify a smaller percentage than a simple majority only if all of the units are restricted exclusively to nonresidential use. Nothing in this paragraph (a) shall be construed to prohibit the association from seeking a court order, in accordance with subsection (7) of this section, to reduce the required percentage to less than sixty-seven percent.

* * *

- (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.