



## SB 100 & SB 89: A QUICK REFERENCE GUIDE

### I. RESTRICTIONS ON COVENANTS AND BYLAWS

#### **1.1 XERISCAPING (37-60-126(11))**

*Effective Date:* June 6, 2005

*Applicability:* Applies to all pre and post-CCIOA common interest communities

- Any restrictive covenant that prohibits or limits xeriscaping, or requires the primary or exclusive use of turf grass is unenforceable.
- Associations may not place any additional burdens (procedural or financial) on owners who submit xeriscape plans for approval.
- Associations may bring enforcement actions against unit owners who allow their grass to die unless water restrictions are in effect.
- Associations must give unit owners a reasonable and practical time period to try to revive grass that died during a period of water restrictions before requiring re-sodding.

#### **1.2 PATRIOTIC AND POLITICAL EXPRESSION, EMERGENCY VEHICLES, AND FIRE MITIGATION (38-33.3-106.5)**

*Effective Date:* June 6, 2005

*Effective Date Of SB 89 Amendments:* May 26, 2006

*Applicability:* Applies to all pre and post-CCIOA common interest communities

- An association may not prohibit a unit owner **or occupant** from displaying the American flag on the unit owner's property, window or adjoining balcony if the display is consistent with the Federal Flag Code.
- An association may not prohibit a unit owner or *occupant* who is or whose immediate family is a member of the active or reserve military service from displaying a service flag on the unit's window or door during a time of war or armed conflict.
- *An association must allow unit owners and occupants to display one political sign per political office or ballot issue within 45 days before any election and seven days after an election on the unit property or window. An association may regulate the size of political signs, but must allow the smaller of 36" x 48" or the maximum size allowed by an applicable local ordinance.*
- An association may not prohibit the parking on the association's streets, the unit driveway, or the association's guest parking spaces of an emergency vehicle with an official emblem weighing less than 10,000 lbs that is a condition of employment of a unit owner *or occupant's* employment as a emergency service provider and does not impede the safe and efficient use of the streets for other unit owners.
- An association may not prohibit unit owners from removing vegetation surrounding the owner's home for fire mitigation purposes and following a written defensible space plan created for the property and filed with the association.
- *An association may not require the use of cedar shakes or other flammable materials.*

### II. GENERAL GOVERNANCE

#### **2.1 RESPONSIBLE GOVERNANCE POLICIES (38-33.3-209.5)**

*Effective Date:* January 1, 2006

*Effective Date Of SB 89 Amendments:* May 26, 2006

*Applicability:* Applies to all pre and post-CCIOA common interest communities currently covered by CCIOA

- An association must maintain *accurate and complete accounting records*.
- An association must adopt written policies, procedures, and rules and regulations regarding: 1) collection of unpaid assessments; 2) handling board member conflicts of interest; 3) conduct of meetings; 4) covenant and rule enforcement, including notice and hearing procedures and fine schedule; 5) inspection and copying of association records by unit owners; 6) investment of reserve funds; 7) the adoption and amendment of policies, procedures, and rules; 8) *addressing disputes arising between the association and unit owners*; 9) *schedule of reserve study and funding of reserve fund*.
- No fines may be imposed unless association adopted and follows written policy governing fines, which includes a fair and impartial fact finding process and an impartial decision maker.

**2.2 MEETINGS – NOTICE AND OWNER PARTICIPATION (38-33.3-308)***Effective Date:* January 1, 2006*Effective Date Of SB 89 Amendments:* May 26, 2006*Applicability:* Applies to all pre and post-CCIOA common interest communities currently covered by CCIOA with the exception of associations that include time-share units

- Notice of **any unit owner meetings** must be physically posted in a conspicuous place if at all feasible in addition to any electronic postings or mail notices that are given.
- Associations are encouraged to use electronic means of giving notice of unit owner meetings. If electronic means are available, the association must e-mail meeting notices to unit owners who request it and provide the association with their e-mail.
- The board must allow a unit owner to speak before the board takes formal action on an item under consideration in addition to any other opportunities to speak. The board may place reasonable time restrictions on persons speaking. The board must provide for a reasonable number of persons to speak on each side of an issue.

**2.3 AMENDMENT OF DECLARATION (38-33.3-217)***Effective Date:* June 6, 2005*Effective Date Of SB 89 Amendments:* May 26, 2006*Applicability:* Applies to all pre and post-CCIOA common interest communities currently covered by CCIOA, **except declarant-controlled communities, phased communities, non-residential communities and communities whose declaration allocates 67% or more of the votes in the association to one owner**

- An association's declaration cannot require an affirmative vote of fifty percent or less, or more than sixty-seven percent of the total number of votes allocated to the association to amend the declaration. Any existing provision in an association's declaration that requires a percentage higher than sixty-seven percent is deemed to specify a percentage of sixty-seven percent.
- *An association whose declaration provides for an initial period of applicability, followed by automatic extension periods, may amend its declaration at any time in accordance with above requirements.*
- When the approval of first mortgagees is required to amend a declaration, the association *may choose to send a dated, written notice and copy of the proposed amendment by certified mail to each mortgagee at its most recent address. If the association does so, it must also have the notice along with information on how to obtain a copy of the proposed amendment printed twice on separate occasions at least one week apart in a newspaper in association's county. Any first mortgagee that does not give the association a negative response within sixty days after the notice date will be deemed to have approved the proposed amendment. **This notification procedure is not mandatory.***

**2.4 ASSOCIATION RECORDS – RETENTION & OWNER INSPECTION (38-33.3-317)***Effective Date:* January 1, 2006*Effective Date Of SB 89 Amendments:* May 26, 2006*Applicability:* All pre and post-CCIOA common interest communities currently covered by CCIOA.

- Associations must keep the following as a permanent record: 1) minutes of all unit owner and board meetings; 2) a record of all actions taken by the unit owners or board by written consent instead of holding a meeting; 3) a record of all actions taken by a committee of the board and 4) a record of all waivers of meeting notices of unit owners, board members, or any committee members.
- The association must maintain a record of unit owners that allows preparation of a list of the names and addresses of all unit owners that shows the number of votes each unit owner is entitled to vote. Time-share communities are not subject to this requirement.
- Association records must be maintained in written form or in another form that can be converted into written form.
- An association must make all financial and other records available during normal business hours, on notice of five business days *or at the next regularly scheduled board or owner meeting if it occurs within thirty days after the request*, for examination and copying by any unit owner if the following conditions are met: 1) the request was made in good faith and for a proper purpose; 2) the request describes with reasonable detail the records sought and why; and 3) the records are relevant to the purpose of the request.
- *Membership list may not be obtained for any person unrelated to a unit owner's interest as a unit owner without the board's consent.*

- In addition to the permanent records an association is required to keep, an association must keep a copy of each of the following records at its principal office: 1) its articles of incorporation or other applicable organizational documents; 2) the declaration; 3) the covenants; 4) its bylaws; 5) resolutions adopted by the board that affect unit owners; 6) the minutes of all unit owners' meetings and records of actions taken by unit owners without a meeting for the past three years; 7) all written communications within the past three years to unit owners; 8) a list of the names and business or home addresses of its current directors and officers; 9) its most recent annual report, if any; and 10) all financial audits or reviews conducted pursuant to section 38-33.3-303(4)(b) during the immediately preceding three years.
- An association may charge unit owners *in advance* the "actual cost" for copying records, which includes personnel and equipment used for the search, retrieval, and copying of the records.

### 2.5 AUDIT OR REVIEW (38-33.3-303(4)(b)(I)-(IV))

*Effective Date:* January 1, 2006      *Effective Date Of SB 89 Amendments:* May 26, 2006

*Applicability:* All pre and post-CCIOA common interest communities currently covered by CCIOA with the exception of associations that include time-share units

- *An association's books and records must be audited (using generally accepted auditing standards) by a CPA selected by the board if 1) the association has annual revenues or expenditures of at least two hundred fifty thousand dollars; AND 2) the owners of at least one-third of the units have requested an audit .*
- *A review must be performed if request by the owners of at least one-third of the units.*
- *A review must be performed by a person selected by the board that has a basic understanding of accounting from prior business experience, education above the high school level or bona fide home study.*
- Copies of the audit or review must be available at the request of any unit owner no later than thirty days after it is completed.

### 2.6 USE OF BALLOTS AND PROXIES (38-33.3-310)

*Effective Date:* January 1, 2006      *Effective Date Of SB 89 Amendments:* May 26, 2006

*Applicability:* Applies to all pre and post-CCIOA common interest communities. Associations that include time-share units *and association that use delegates to elect board members* are exempt from the provision requiring secret ballots to be used to elect board members.

- *Votes for board members in a contested election shall be taken by secret ballot. If requested by twenty percent of unit owners present at the meeting in person or by proxy, a secret ballot must be used for a vote on any matter on which all unit owners are entitled to vote. Ballots must be counted by a neutral third party or by committee of volunteers who are selected at an open meeting, who are not board members, and in the case of a contested election, are not candidates. Results of the vote must be announced without reference to any identifying information.*

### 2.7 BOARD OF DIRECTORS' CONFLICTS OF INTEREST (38-33.3-310.5)

*Effective Date:* January 1, 2006      *Effective Date Of SB 89 Amendments:* May 26, 2006

*Applicability:* Applies to all pre and post-CCIOA common interest communities currently covered by CCIOA with the exception of associations that include time-share units

- *Boards are subject to the conflict of interest section (7-128-501) of the Colorado Revised Nonprofit Code, which allows board members to vote after disclosing the conflict of interest.*

### 2.8 BOARD OF DIRECTORS' STANDARD OF CARE WHEN INVESTING RESERVE FUNDS (38-33.3-303)

*Effective Date:* May 26, 2006

*Applicability:* Applies to all pre and post-CCIOA common interest communities currently covered by CCIOA

- *Boards are subject to the standard of care in section 7-128-401 of the Colorado Revised Nonprofit Code, which requires boards to invest reserve funds in good faith and with the care of an ordinarily prudent person in like circumstances would take.*

### **III. REQUIRED DISCLOSURES**

#### **3.1 GENERAL DISCLOSURES (38-33.3-209.4)**

*Effective Date:* January 1, 2006      *Effective Date Of SB 89 Amendments:* May 26, 2006

*Applicability:* All pre and post-CCIOA common interest communities currently covered by CCIOA with the exception of time-share units

- *Within 90 days after transition*, an association on reasonable notice shall provide the following information in one of the four ways provided for an association to make their required annual disclosure: 1) the association's name; 2) the name of the association's agent or manager, if any; 3) the valid physical address for both the association and its agent or manager, if any; 4) the name of the common interest community, 5) the initial date of the recording of the declaration; and 6) the recording information for the declaration.
- An association shall **make updated information available within** ninety days if the association's address or agent or management company changes.
- Within ninety days after assuming control from declarant and within 90 days after the end of each fiscal year thereafter, the association shall make the following information available at no charge to its unit owners: 1) the date the fiscal year begins; 2) current operating budget; 3) a list, by unit type, of all special and regular assessments; 4) all annual financial statements, including amounts held in reserve; 5) results of **its most recent available** financial audit or review; 6) a list of all association insurance policies that includes company names, policy limits, policy deductibles, additional named insureds, and expiration dates; 7) all bylaws, articles, and rules and regulations; 8) minutes from board and member meetings for fiscal year preceding annual disclosure; and 9) responsible governance policies adopted under 38-33.3-209.5.
- An association may choose to make the required disclosures by 1) posting the information on an internet web page with notice of the web address sent to unit owners via first-class mail or e-mail; 2) maintaining a literature table or binder at the association's principal place of business; 3) mail; or 4) personal delivery.

#### **3.2 SALE OF UNIT – DISCLOSURE OF BUYER'S RESPONSIBILITIES TO ASSOCIATION AND REQUIREMENT FOR ARCHITECTURAL APPROVAL (38-35.7-102)**

*Effective Date:* January 1, 2006      *Effective Date Of SB 89 Amendments:* May 26, 2006

*Applicability:* Applies to all pre and post-CCIOA common interest communities currently covered by CCIOA with the exception of time-share units.

- *Every sales contract for the sale of residential property in a common interest community, must contain a disclosure statement in bold-faced type that substantially states that the property is located in a common interest community, that the owner has an obligation to pay assessments, and that architectural approval may be necessary for exterior modifications of his or her unit.*
- *If the seller fails to provide such information and disclosure statement, the buyer has a claim against the seller for all actual and proximate damages and court costs. It is an affirmative defense that the buyer had actual or constructive knowledge of the facts.*
- *On request, the seller shall provide or authorize the association to provide to the buyer on payment of the association's fees all of the governing and financial documents listed in the most recent available sales contract promulgated by the Colorado real estate commission.*

### **IV. BOARD MEMBER AND OWNER EDUCATION**

#### **4.1 EDUCATIONAL REIMBURSEMENT FOR BOARD MEMBERS (38-33.3-209.6)**

*Effective Date:* January 1, 2006

*Applicability:* Applies to all pre and post-CCIOA common interest communities currently covered by CCIOA.

- An association may reimburse board members for the actual and necessary expenses for attending educational classes and seminars on topics specific to Colorado as common expense. [38-33.3-209.6]



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### **4.2 REQUIRED OWNER EDUCATION (38-33.3-209.7)**

*Effective Date:* January 1, 2006

*Applicability:* Applies to all pre and post-CCIOA common interest communities currently covered by CCIOA with the exception of associations that include time-share units

- An association shall at least annually provide some type of education at no cost to its owners on such topics as the general operations of the association and the rights and responsibilities of owners, the association, and the board under Colorado law with the criteria for compliance to be determined by the board. [38-33.3-209.7(1)]

## **V. OWNER INITIATED INSURANCE CLAIMS**

### **5.1 OWNER INITIATED INSURANCE CLAIMS (10-4-110.8(5))**

*Effective Date:* May 26, 2006

*Applicability:* Applies differently to pre and post-CCIOA communities

- *A unit owner may file a claim against an association's insurance policy like a named insured if 1) the unit owner has contacted the board or manager in writing, and in compliance with any applicable association policies and procedures of owner-initiated insurance claim about the claim's subject matter; 2) the unit owner has given the association at least fifteen days to respond in writing and, if requested, has given the association's agent a reasonable opportunity to inspect the damage; and 3) the subject matter of the claim falls within the association's insurance responsibilities.*
- *The association's insurer shall not consider unit owner requests for clarification of coverage when determining premiums.*