



Real Estate Commission

Department of Regulatory Agencies - Division of Real Estate

[Index](#) [Search](#)

Colorado Real Estate Commission

[What's New](#)

[About the Division](#)

[Audit Section](#)

[Appraiser Information](#)

[Commission Members](#)

[Complaint Process](#)

[Disciplinary Documents](#)

[Education](#)

[Enforcement](#)

[Errors & Omissions Insurance](#)

[Fees](#)

[Forms](#)

[License Database](#)

[License Recognition](#)

[Licensing](#)

[Manual](#)

[Meeting Schedule](#)

[Newsletter](#)

[On-Line Renewal](#)

[Related Links](#)

[Rules](#)

[Statutes](#)

[Staff Directory](#)

[[PREVIOUS PAGE](#) | [NEXT PAGE](#) | [MANUAL CONTENTS](#) | [CHAPTER 4 CONTENTS](#)]

An * in the left margin indicates a change in the statute, rule or text since the 1999 publication of the manual. Red text indicates a change in the statute, rule or text since the 2000 publication of the manual.

Colorado Real Estate Manual - Chapter 4

COLORADO COMMON INTEREST OWNERSHIP ACT

38-33.3-101. Short title. This article shall be known and may be cited as the "Colorado Common Interest Ownership Act".

38-33.3-102. Legislative declaration.

(1) The general assembly hereby finds, determines, and declares, as follows:

(a) That it is in the best interests of the state and its citizens to establish a clear, comprehensive, and uniform framework for the creation and operation of common interest communities;

(b) That the continuation of the economic prosperity of Colorado is dependent upon the strengthening of homeowner associations in common interest communities financially through the setting of budget guidelines, the creation of statutory assessment liens, the granting of six months' lien priority, the facilitation of borrowing, and more certain powers in the association to sue on behalf of the owners and through enhancing the financial stability of associations by increasing the association's powers to collect

Subdivisions

delinquent assessments, late charges, fines, and enforcement costs;

(c) That it is the policy of this state to give developers flexible development rights with specific obligations within a uniform structure of development of a common interest community that extends through the transition to owner control;

(d) That it is the policy of this state to promote effective and efficient property management through defined operational requirements that preserve flexibility for such homeowner associations;

(e) That it is the policy of this state to promote the availability of funds for financing the development of such homeowner associations by enabling lenders to extend the financial services to a greater market on a safer, more predictable basis because of standardized practices and prudent insurance and risk management obligations.

38-33.3-103. Definitions.

As used in the declaration and bylaws of an association, unless specifically provided otherwise or unless the context otherwise requires, and in this article:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person: is a general partner, officer, director, or employee of the declarant; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests of the declarant; controls in any manner the election of a majority of the directors of the declarant, or has contributed more than twenty percent of the capital of the declarant. A person is controlled by a declarant if the declarant: is a general partner, officer, director, or employee of the person; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests of the person; controls in any manner the election of a majority of the directors of the person; or has contributed more than twenty percent of the

capital of the person. Control does not exist if the powers described in this subsection (1) are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the following interests allocated to each unit:

(a) In a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association;

(b) In a cooperative, the common expense liability and the ownership interest and votes in the association; and

(c) In a planned community, the common expense liability and votes in the association.

(2.5) "Approved for Development" means that all or some portion of a particular parcel of real property is zoned or otherwise approved for construction of residential and other improvements and authorized for specified densities by the local land use authority having jurisdiction over such real property and includes any conceptual or final planned unit development approval.

(3) "Association" or "unit owners' association" means a unit owners' association organized under section 38-33.3-301.

(4) "Bylaws" means any instruments, however denominated, which are adopted by the association for the regulation and management of the association, including any amendments to those instruments.

(5) "Common elements" means:

(a) In a condominium or cooperative, all portions of the condominium or cooperative other than the units; and

(b) In a planned community, any real estate within a planned community owned or leased by the association, other than a unit.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 38-33.3-207.

(7) "Common expenses" means expenditures made or liabilities incurred by or on behalf of the association, together with any allocations to reserves.

(8) "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of such person's ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in a declaration. Ownership of a unit does not include holding a leasehold interest in a unit of less than forty years, including renewal options. The period of the leasehold interest, including renewal options, is measured from the date the initial term commences.

(9) "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(10) "Cooperative" means a common interest community in which the real property is owned by an association, each member of which is entitled by virtue of such member's ownership interest in the association to exclusive possession of a unit.

(11) "Dealer" means a person in the business of selling units for such person's own account.

(12) "Declarant" means any person or group of persons acting in concert who:

(a) As part of a common promotional plan, offers to dispose of to a purchaser such declarant's interest in a unit not previously disposed of to a purchaser; or

(b) Reserves or succeeds to any special declarant right.

(13) "Declaration" means any recorded instruments however denominated, that create a common interest community, including any amendments to those instruments and also including, but not limited to, plats and maps.

(14) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to:

(a) Add real estate to a common interest community;

(b) Create units, common elements, or limited common elements within a

common interest community;

(c) Subdivide units or convert units into common elements; or

(d) Withdraw real estate from a common interest community.

(15) "Dispose" or "disposition" means a voluntary transfer of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.

(16) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

(16.5) "Horizontal boundary" means a plane of elevation relative to a described bench mark that defines either a lower or an upper dimension of a unit such that the real estate respectively below or above the defined plane is not a part of the unit.

(17) "Identifying number" means a symbol or address that identifies only one unit in a common interest community.

(17.5) "Large planned community" means a planned community that meets the criteria set forth in section 38-33.3-116.3 (1).

(18) "Leasehold common interest community" means a common interest community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the common interest community or reduce its size.

(19) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of section 38-33.3-202 (1) (b) or (1) (d) for the exclusive use of one or more units but fewer than all of the units.

(19.5) "Map" means that part of a declaration that depicts all or any portion of a common interest community in three dimensions, is executed by a person that is authorized by this title to execute a declaration relating to the common interest community, and is recorded in the real estate records in every county in which any portion of the common interest community is located. A map is required for a common interest community with units having a horizontal boundary. A map and a plat may be combined in one instrument.

(20) "Master association" means an organization that

is authorized to exercise some or all of the powers of one or more associations on behalf of one or more common interest communities or for the benefit of the unit owners of one or more common interest communities.

(21) "Person" means a natural persons a corporation, a partnership, an association, a trust or any other entity or any combination thereof.

(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 38-51-105 6 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 dealers 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 interests 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 customs usage, or laws pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without horizontal boundaries and spaces that may be filled with air or water.

(26) "Residential use" means use for dwelling or recreational purposes but does not include spaces or units primarily used for commercial income from, or

service to, the public.

(27) "Rules and regulations" means any instruments, however denominated, which are adopted by the association for the regulation and management of the common interest community, including any amendment to those instruments.

(28) "Security interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to perform the following acts as specified in parts 2 and 3 of this article: To complete improvements indicated on plats and maps filed with the declaration; to exercise any development right; to maintain sales offices, management offices, signs advertising the common interest community, and models; to use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community; to make the common interest community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the association or any executive board member during any period of declarant control.

(30) "Unit" means a physical portion of the common interest community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the declaration. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

(31) "Unit owner" means the declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease, the expiration or termination of which will remove the unit from the common interest community but does not include a

person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration until that unit is conveyed to another person, in a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated pursuant to section 38-33.3-207 until that unit has been conveyed to another person, who may or may not be a declarant under this article.

(32) "Vertical boundary" means the defined limit of a unit that is not a horizontal boundary of that unit.

38-33.3-104. Variation by agreement.

Except as expressly provided in this article, provisions of this article may not be varied by agreement, and rights conferred by this article may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this article or the declaration.

38-33.3-105. Separate titles and taxation.

(1) In a cooperative, unless the declaration provides that a unit owner's interest in a unit and its allocated interests is personal property, that interest is real estate for all purposes.

(2) In a condominium or planned community with common elements, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate and must be separately assessed and taxed. The valuation of the common elements shall be assessed proportionately to each unit, in the case of a condominium in accordance with such unit's allocated interests in the common elements, and in the case of a planned community in accordance with such unit's allocated common expense liability, set forth in the declaration, and the common elements shall not be separately taxed or assessed. Upon the filing for recording of a declaration for a condominium or planned community with common elements, the declarant shall deliver a copy of such filing to the assessor of each county in which such declaration was filed.

(3) In a planned community without common elements, the real estate comprising such planned community may be taxed and assessed in any manner provided by law.

38-33.3-106. Applicability of local ordinances, regulations, and building codes.

(1) A building code may not impose any requirement

upon any structure in a common interest community which it would not impose upon a physically identical development under a different form of ownership; except that a minimum one hour fire wall may be required between units.

(2) In condominiums and cooperatives, no zoning, subdivision, or other real estate use law, ordinance, or regulation may prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative which it would not impose upon a physically identical development under a different form of ownership.

38-33.3-107. Eminent domain.

(1) If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking. Any remnant of a unit remaining after part of a unit is taken under this subsection (1) is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit or on any other basis specified in the declaration; and

(b) The portion of allocated interests divested from the partially acquired unit is automatically reallocated to that unit and to the remaining units in proportion to the respective interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by eminent domain, that portion of any award attributable to the common elements taken must be paid to the

association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition. For the purposes of acquisition of a part of the common elements other than the limited common elements under this subsection (3), service of process on the association shall constitute sufficient notice to all unit owners, and service of process on each individual unit owner shall not be necessary.

(4) The court decree shall be recorded in every county in which any portion of the common interest community is located.

(5) The reallocations of allocated interests pursuant to this section shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

38-33.3-108. Supplemental general principles of law applicable.

The principles of law and equity, including, but not limited to, the law of corporations and un-incorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this article, except to the extent inconsistent with this article.

38-33.3-109. Construction against implicit repeal.

This article is intended to be a unified coverage of its subject matter, and no part of this article shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

38-33.3-110. Uniformity of application and construction.

This article shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

38-33.3-111. Severability.

If any provision of this article or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provisions or application, and, to this end, the provisions of this article are severable.

38-33.3-112. 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. 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. 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. 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. Exception for new small cooperatives and small and limited expense planned communities.

(1) If a cooperative created in this state on or after July 1, 1992, but prior to July 1, 1998, contains only units restricted to nonresidential use, or contains no more than ten units and is not subject to any development rights, it is subject only to sections 38-33.3-105, 38-33.3-106 and 38-33.3-107, unless the declaration provides that this entire article is applicable. 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, may not exceed three hundred dollars, it is subject only to sections 38-33.3-105, 38-33.3-106, and 38-33.3-107, unless the declaration provides that this entire article is applicable.

(2) If a cooperative or planned community created in this state on or after July 1, 1998, 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, 38-33.3-106, and 38-33.3-107, unless the declaration provides that this entire article is applicable. If a planned community created in this state after July 1, 1998, 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, may not exceed four hundred dollars, as adjusted pursuant to subsection (3) of this section, it is subject only to sections 38-33.3-105, 38-33.3-106, and 38-33.3-107, unless the declaration provides that this entire article is applicable.

(3) The four-hundred-dollar limitation set forth in subsection (2) of this section shall 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 limitation shall not be increased if the final consumer price index for the preceding calendar year did not increase and shall not be decreased if the final consumer price index for the preceding calendar year decreased.

38-33.3-116.3. 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 effective 7-1-95

(d) It is zoned for development of at least two hundred residences and at least twenty thousand square feet of commercial use at the time of recording the affidavit required pursuant to subsection (2) of this section; and

(e) It meets the definition of a planned community pursuant to section 38-33.3-103 (22).

(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), (2)(c), (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 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 owner's 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. Applicability to preexisting common interest communities.

(1) Except as provided in section 38-33.3-119, the following sections shall apply to all common interest communities created within this state before July 1, 1992; with respect to events and circumstances occurring on or after July 1, 1992:

(a) 38-33.3-101 and 38-33.3-102;

(b) 38-33.3-103, to the extent necessary in construing any of the other sections of this article;

(c) 38-33.3-104 to 38-33.3-111;

(d) 38-33.3-114;

(e) 38-33.3-118;

(f) 38-33.3-120;

(g) 38-33.3-122 and 38-33.3-123;

(h) 38-33.3-203;

(i) 38-33.3-302 (1)(a) to (1)(f), (1)(j) to (1)(m), and (1)(o) to (1)(q);

(j) 38-33.3-311;

(k) 38-33.3-316

(l) 38-33.-317 to 38-33.3-319.

(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. 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. Section 38-33.3-316 shall be applied and construed as stated in such section.

(3) Except as expressly provided for in this section, this article shall not apply to common interest communities created within this state before July 1,

1992.

(4) Section 38-33.3-308 (2) to (7) shall apply to all common interest communities created within this state before July 1, 1995, and shall apply to all meetings of the executive board of such a community or any committee thereof occurring on or after said date. In addition, said section 38-33.3-308 (2) to (7) shall apply to all common interest communities created on or after July 1, 1995, and shall apply to all meetings of the executive board of such a community or any committee thereof occurring on or after said date.

38-33.3-118. Procedure to elect treatment under the "Colorado common interest ownership act".

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

(a) If there are members or stockholders entitled to vote thereon, the board of directors may adopt a resolution recommending that such association accept this article and directing that the question of acceptance be submitted to a vote at a meeting of the members or stockholders entitled to vote thereon, which may be either an annual or special meeting. The question shall also be submitted whenever one-twentieth, or, in the case of an association with over one thousand members, one-fortieth, of the members or stockholders entitled to vote thereon so request. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider electing to be treated as a common interest community organized after June 30, 1992, and thereby accepting the provisions of this article, together with a copy of this article, shall be given to each person entitled to vote at the meeting within the time and in the manner provided in the articles of incorporation, declaration, bylaws, or other governing documents for such association for the giving of notice of meetings to members. Such election to accept the provisions of this article shall require for adoption at least sixty-seven percent of the votes that the persons present at such meeting in person or by proxy are entitled to cast.

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

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

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

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

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

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

(e) (deleted by amendment effective 4-30-93)

(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, 1991.

38-33.3-119. 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, it is subject only to sections 38-33.3-105, 38-33.3-106, and 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. 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.

38-33.3-120.5 Extension of declaration term.

(1) If a common interest community has a declaration in effect with a limited term of years that was recorded prior to July 1, 1992, and if, before the term of the declaration expires, the unit owners in the common interest community have not amended the declaration pursuant to section 38-33.3-120 and in accordance with any conditions or fixed limitations described in the declaration, the declaration may be extended as provided in this section.

(2) The term of the declaration may be extended:

(a) If the executive board adopts a resolution recommending that the declaration be extended for a specific term not to exceed twenty years and directs that the question of extending the term of the declaration be submitted to the unit owners, as members of the association; and

(b) If an extension of the term of the declaration is approved by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies.

(3) Except for the extension of the term of a declaration as authorized by this section, no other provision of a declaration may be amended pursuant to the provisions of this section.

(4) For any meeting of unit owners at which a vote is to be taken on a proposed extension of the term of a declaration as provided in this section, the secretary

or other officer specified in the bylaws shall provide written notice to each unit owner entitled to vote at the meeting stating that the purpose, or one of the purposes, of the meeting is to consider extending the term of the declaration. The notice shall be given in the time and manner specified in section 38-33.3-308 or in the articles of incorporation, declaration, bylaws, or other governing documents of the association.

(5) The extension of the declaration, if approved, shall be included in an amendment to the declaration and shall be executed, acknowledged, and recorded by the association in the records of the clerk and recorder of each county in which any portion of the common interest community is located. The amendment shall include:

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

(b) A statement that the association has elected to extend the term of the declaration pursuant to this section and the term of the approved extension;

(c) A statement that indicates that the executive board has adopted a resolution recommending that the declaration be extended for a specific term not to exceed twenty years, that sets forth the date of the meeting at which the unit owners elected to extend the term of the declaration, and that declares that the extension was authorized by a vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies;

(d) A statement of the names and respective addresses of the officers and executive board members of the association.

(6) Upon the recording of the amendment required by subsection (5) of this section, and subject to the provisions of this section, a common interest community is subject to all provisions of the declaration, as amended.

38-33.3-121. 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.

38-33.3-121. Applicability to nonresidential planned communities.

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38-33.3-122. Applicability to out-of-state common interest communities.

This article does not apply to common interest communities or units located outside this state.

38-33.3-123. Enforcement.

(1) If any person subject to the provisions of this article fails to comply with any of its provisions or any provision of the declaration, bylaws, articles, or rules and regulations, any person or class of persons adversely affected by the failure to comply may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. For each claim, including but not limited to counterclaims, cross-claims, and third-party claims, in any legal proceeding to enforce the provisions of this article or of the declaration, bylaws, articles, or rules and regulations, the court shall award to the party prevailing on such claim the prevailing party's reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim.

(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.

CREATION, ALTERATION, AND TERMINATION

38-33.3-201. Creation of common interest communities.

(1) A common interest community may be created pursuant to this article 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 recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association and in the grantor's index in the name of each person executing the declaration. 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. 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. 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 un-marketable 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. 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. 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:

(l) 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. 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. 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, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements 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. 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. 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 plat or map is not required by this article if all the information required by this section is contained in the declaration. Each plat or map must be clear and legible. Each map must contain a certification that the map contains all the information required by this section.

(2) In addition to meeting the requirements of a land survey plat as set forth in section 38-51-105.6 each map must show:

(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 of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;

(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 any vertical boundaries not shown or projected on maps recorded pursuant to subsection (4) of this section and that unit's identifying number;

(g) The location, with reference to established data, of horizontal boundaries, if any, not shown or projected on maps recorded pursuant to subsection (4) of this section, and that unit's identifying number;

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

(i) The distance between non-contiguous 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 effective 4-30-93)

(4) To the extent not shown or projected on the plats, maps of the units must show or project:

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

(b) Horizontal boundaries, if any, with reference to all established data, and that unit's identifying number;

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

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

(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 or 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.

38-33.3-210. 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. 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. 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. 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. 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. 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 offices 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. 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) 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. Amendment of declaration.

(1) Except in cases of amendments that may be executed by a declarant under section 38-33-205(4) and (5), 38-33.3-208(3), 38-33.3-209(6), 38-33.3-210, or 38-33.3-222 or by the 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) and except as limited by subsection (4) of this section, the declaration, including the plats and maps, may be amended only by 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 the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(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) 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) 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.

(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, by the association.

38-33.3-218. 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.

(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.