

SB 100: A Quick Reference Guide

I. RESTRICTIONS ON COVENANTS AND BYLAWS

1.1 XERISCAPING (37-60-126)

Effective Date: June 6, 2005

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

Any restrictive covenant that prohibits or limits xeriscaping, prohibits or limits the installation of drought tolerant vegetative landscapes or requires the primary use of turf grass is unenforceable. [37-60-126(11)(a)]

Associations may not place any additional burdens (procedural or financial) on owners who submit xeriscape plans for approval. [37-60-126(11)(b)]

Associations may bring enforcement actions against unit owners who allow their grass to die unless water restrictions are in effect. [37-60-126(11)(c)]

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. [37-60-126(11)(c)(1)]

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

Effective Date: June 6, 2005

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

An association may not prohibit the display of the American flag by a unit owner on a unit owner's property, in an owner's window or adjoining balcony if the display is consistent with the Federal Flag Code. [38-33.3-106.5(1)(a)]

An association may not prohibit the display of a service flag by a unit owner on the unit owner's window or door who is or whose immediate family is a member of the active or reserve military service. [38-33.3-106.5(1)(b)]

An association must at least allow unit owners to display political signs in the manner no more restrictive than any applicable local ordinances. If no ordinances apply, an association may not prohibit the display of at least one political sign per political office or ballot issue within 45 days before any election and within seven days after any election on a unit owner's property or window. [38-33.3-106.5(1)(c)]

An association may not prohibit the parking on the association's streets, the unit owner's 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 for a unit owner's employment as a emergency service provider and does not impede the safe and efficient use of the streets for other unit owners. [38-33.3-106.5(d)]

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. [38-33.3-106.5(e)]

An association may not prohibit a unit owner from replacing flammable roofing material with non-flammable material, but the bylaws may specify standards for the color and appearance of the

replacement material as long as the those replacement materials do not cost more than replacing the roof with the flammable material. [38-33.3-106.5(f)]

II. GENERAL GOVERNANCE

2.1 RESPONSIBLE GOVERNANCE POLICIES (38-33.3-209.5)

Effective Date: January 1, 2006

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

An association must maintain accounting records using generally accepted accounting principles. [38-33.3-209.5]

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; and 7) the adoption and amendment of policies, procedures, and rules. [38-33.3-209.5]

2.2 MEETINGS – NOTICE AND OWNER PARTICIPATION (38-33.3-308)

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

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. [38-33.3-308(1)]

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. [38-33.3-308(2)(b)(I)]

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. However, 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. [38-33.3-308(2.5)(b)]

2.3 STANDARDS FOR APPROVAL OR DENIAL OF UNIT OWNERS' ARCHITECTURAL OR LANDSCAPING APPLICATIONS (38-33.3-302(3)(b))

Effective Date: January 1, 2006

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

The approval or denial of unit owners' applications for architectural or landscaping changes must be made in compliance with standards and procedures contained in the declaration or bylaws and may not be made arbitrarily or capriciously. [38-33.3-302(3)(b)]

2.4 AMENDMENT OF DECLARATION (38-33.3-217)

Effective Date: June 6, 2005

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

An association's declaration cannot require an affirmative vote of less than fifty percent 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 that remains will be deemed to specify a percentage of sixty-seven percent. [38-33.3-217]

When the approval of first mortgagees is required to amend a declaration, the association must send a dated, written notice and copy of the proposed amendment by certified mail to each mortgagee at its most recent address. The association 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. [38-33.3-217(1)(b)]

2.5 ASSOCIATION RECORDS – RETENTION & OWNER INSPECTION (38-33.3-317)

Effective Date: January 1, 2006

Applicability: All pre and post-CCIOA common interest communities currently covered by CCIOA with one exception. Associations do not have to maintain a record of homeowners in a form that allows the preparation of a list of the names and owners, showing the number of votes each homeowner is entitled to vote for any time-share units within their community.

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. [38-33.3-317(1)(b)].

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. [38-33.3-317(1)(c)(I), (II)]

Association records must be maintained in written form or in another form that can be converted into written form. [38-33.3-317(1)(d)]

An association must make all financial and other records available during normal business hours, on notice of five business days, 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. [38-33.3-317(2),(4)]

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. [38-33.3-317(5)]

An association may charge unit owners the "actual cost" for copying records, which includes personnel and equipment used for the search, retrieval, and copying of the records. [38-33.3-317(3)]

2.6 REQUIRED AUDIT OR REVIEW (38-33.3-303(b)(i)-(iv))

Effective Date: January 1, 2006

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

Once every two years, the association's books and records must be reviewed (using statements on standards for accounting and review services) or audited (using generally accepted auditing standards). The board shall select the person conducting the review or audit. Unless an audit is to be conducted, such person need not be a certified public accountant. [38-33.3-303(4)(b)(I)]

An audit shall be required 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. [38-33.3-303(4)(b)(II)]

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. [38-33.3-303(4)(b)(III)]

2.7 USE OF BALLOTS AND PROXIES (38-33.3-310)

Effective Date: January 1, 2006

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

Votes for board members at annual meetings shall be taken by secret ballot. If requested by an owner, secret ballots must be used for a vote on any other matter on which all unit owners are entitled to vote. Ballots must be counted by a neutral third party or by a unit owner present at the meeting who is not a candidate who was chosen from a pool of such owners. Results of the vote must be announced without reference to any identifying information. [38-33.3-310(1)(b)(I)]

Proxies obtained through fraud or misrepresentation are invalid. Proxies may be appointed as provided in an association's governing documents or as provided in section 7-127-203. [38-33.3-310(2)(a)]

Associations may reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if such rejection is done in good faith and has reasonable basis for doubt about its validity. [38-33.3-310(2)(c)]

The association and the individuals acting for the association in accepting or rejecting one of the above documents will not be liable for any damages if such acceptance or rejection was done in good faith. Any association action based on the acceptance or rejection of one of the above documents is valid unless determined otherwise by a court. [38-33.3-310(2)(d), (e)]

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

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

If any contract or action taken by the board will financially benefit a board member, a board member's parent, grandparent, spouse, child, or sibling, or the parent or spouse of any of those persons, that board member must disclose his or her conflict of interest at an open meeting prior to any action being taken. The member may participate in discussions, but shall not vote on that issue. [38-33.3-310.5(1)]

Any contract entered into in violation of this section is void. [38-33.3-310.5(2)]

Any provision in an association's governing documents that has a stricter definition of conflict of interest will not be invalidated by this section. [38-33.3-310(3)].

III. REQUIRED DISCLOSURES

3.1 GENERAL DISCLOSURES (38-33.3-209.4)

Effective Date: January 1, 2006

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

An association shall annually provide to its unit owners a written notice that states 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. [38-33.3-209.4(1)]

An association shall provide its unit owners with an amended notice within ninety days if the association's address or agent or management company changes. [38-33.3-209.4(1)]

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 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 any current 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; 7) minutes from board and member meetings for fiscal year preceding annual disclosure; and 8) responsible governance policies adopted under 38-33.3-209.5. [38-33.3-209.4(2)]

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. [38-33.3-209.4(3)]

The cost of disclosure must be treated as a common expense. [38-33.3-209.4(3)]

3.2 SALE OF UNIT – SELLER'S DISCLOSURE TO BUYER (38-33.3-223)

Effective Date: January 1, 2006

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

The seller of a unit in a common interest community must mail or deliver to the buyer on or before the title deadline, the most current copies of the following: 1) the bylaws and the rules of the association; 2) the declaration; 3) the covenants; 4) any party wall agreements; 5) minutes of the most recent board and annual unit owners meeting held within the preceding six months of the title deadline; 6) the operating budget; 7) association's annual income and expenditures statement; and 8) the association's annual balance sheet. [38-33.3-223(1)]

An association must use its best efforts to furnish documents under its control at the seller's request. [38-33.3-223(2)]

The buyer may terminate the contract with the seller by tendering a written signed notification of any unsatisfactory provisions on or before the governing documents objection deadline. If the seller does

not receive such a notification, the buyer is deemed to have accepted all terms of documents. [38-33.3-223(3)]

The time periods of this section may be altered by mutual agreement of the parties. [38-33.3-223(4)]

This provision will become effective on January 1, 2006 and applies to all common interest communities currently covered by CCIOA with the exception of time-share units.

3.3 SALE OF UNIT – DISCLOSURE OF BUYER’S RESPONSIBILITIES TO ASSOCIATION AND REQUIREMENT FOR ARCHITECTURAL APPROVAL (38-35.7-102)

Effective Date: January 1, 2006

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

For every sale of residential property in a common interest community, the seller must provide at the seller’s own expense all documents required by section 38-33.3-223 at least ten days before closing in the case of a sale by owner or within the time limits set forth in section 38-33.3-223 in the case of a brokered transaction. [38-35.7-102(1)(a)]

The seller must provide the buyer with a disclosure statement in bold-faced type that substantially states that the buyer understands his or her responsibilities as members of the association and that architectural approval may be necessary for exterior modifications of his or her unit.

The seller has the responsibility to obtain from the buyer a signed acknowledgment of receipt of the information and disclosure statement and deliver it to the association. If the seller fails to provide such information and disclosure statement, the buyer has a claim for relief against the seller for all damages and court costs incurred by the buyer. The seller will not be liable for such failure if the buyer’s damages resulted from the association’s failure to provide the documents within its control to the seller or because the association failed to maintain records as required by section 38-33.3-317. [38-35.7-102(1)(b)(II)]

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 authorize the reimbursement of board members for the actual and necessary expenses incurred in attending educational classes and seminars on topics related to Colorado and referring to applicable sections of CCIOA with such reimbursement counted as common expense. [38-33.3-209.6]

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)]

Copyright©2005, ORTEN & HINDMAN, P.C. Attorneys at Law, All rights reserved. Republication of any portion of this material for anything other than educational purposes without written permission is strictly prohibited.