

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-0290.01 Richard Sweetman x4333

HOUSE BILL 22-1040

HOUSE SPONSORSHIP

Rich and Hooton,

SENATE SPONSORSHIP

Story and Holbert,

House Committees
Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE RIGHT OF UNIT OWNERS IN COMMON INTEREST**
102 **COMMUNITIES TO HAVE REASONABLE ACCESS TO COMMON**
103 **ELEMENTS OF SUCH COMMUNITIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law states that, with certain exceptions, a unit owners' association (association) of a common interest community (community) may regulate the use of common elements of the community (common elements). The bill states that, in regulating the use of common elements, an association shall preserve and protect unit owners' and their guests'

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
Amended 2nd Reading
February 8, 2022

ability to use and enjoy common elements and shall not unreasonably restrict or prohibit unit owners' and their guests' access to, or enjoyment of, any common element. During maintenance, repair, replacement, or modification of a common element, an association may restrict or prohibit unit owners' and their guests' access to, and enjoyment of, a common element only to the extent and for the length of time necessary to:

- Protect the safety of any individuals, including unit owners, their guests, and individuals performing the maintenance, repair, replacement, or modification of the common element; or
- Preserve the structural integrity or condition of a repair, replacement, or modification.

If an association must restrict or prohibit unit owners' access to one or more common elements for more than 24 hours, the association shall provide an electronic or written notice to each unit owner and post a visible, clearly legible notice at each physical access point to the common element, which notice includes:

- A simple explanation of the reason for the restriction or prohibition;
- An indication of the estimated time or date upon which the restriction or prohibition will no longer exist; and
- A telephone number or e-mail address whereby a unit owner may pose questions or concerns about the restriction or prohibition for the consideration of the association.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 38-33.3-302, **amend**
3 (1)(f) as follows:

4 **38-33.3-302. Powers of unit owners' association.** (1) Except as
5 provided in subsections (2) and (3) of this section, and subject to the
6 provisions of the declaration, the association, without specific
7 authorization in the declaration, may:

8 (f) Regulate the use, maintenance, repair, replacement, and
9 modification of common elements; EXCEPT THAT, IN REGULATING THE USE
10 OF COMMON ELEMENTS BY UNIT OWNERS, THE ASSOCIATION SHALL
11 COMPLY WITH SECTION 38-33.3-302.5, INCLUDING DURING THE

1 MAINTENANCE, REPAIR, REPLACEMENT, OR MODIFICATION OF A COMMON
2 ELEMENT;

3 **SECTION 2.** In Colorado Revised Statutes, **add 38-33.3-302.5**
4 as follows:

5 **38-33.3-302.5. Unit owners' [REDACTED] access to common elements -**
6 **duties of association - unreasonable restrictions and prohibitions**
7 **prohibited - notice of restriction or prohibition required.** (1) IN
8 REGULATING THE USE OF COMMON ELEMENTS, AS PERMITTED BY SECTION
9 38-33.3-302 (1)(f), AN ASSOCIATION SHALL PRESERVE AND PROTECT UNIT
10 OWNERS' [REDACTED] ABILITY TO USE AND ENJOY COMMON ELEMENTS AND SHALL
11 NOT UNREASONABLY RESTRICT OR PROHIBIT UNIT OWNERS' [REDACTED] ACCESS TO,
12 OR ENJOYMENT OF, ANY COMMON ELEMENT, INCLUDING DURING THE
13 MAINTENANCE, REPAIR, REPLACEMENT, OR MODIFICATION OF A COMMON
14 ELEMENT.

15 (2) DURING MAINTENANCE, REPAIR, REPLACEMENT, OR
16 MODIFICATION OF A COMMON ELEMENT, AN ASSOCIATION MAY RESTRICT
17 OR PROHIBIT UNIT OWNERS' [REDACTED] ACCESS TO, AND ENJOYMENT OF, THE
18 COMMON ELEMENT ONLY TO THE EXTENT AND FOR THE LENGTH OF TIME
19 NECESSARY TO:

20 (a) PROTECT THE SAFETY OF ANY INDIVIDUALS, INCLUDING UNIT
21 OWNERS AND INDIVIDUALS PERFORMING THE MAINTENANCE, REPAIR,
22 REPLACEMENT, OR MODIFICATION OF THE COMMON ELEMENT; OR

23 (b) PRESERVE THE STRUCTURAL INTEGRITY OR CONDITION OF A
24 REPAIR, REPLACEMENT, OR MODIFICATION.

25 (3) IF AN ASSOCIATION MUST RESTRICT OR PROHIBIT UNIT OWNERS'
26 ACCESS TO ONE OR MORE COMMON ELEMENTS OF THE COMMON INTEREST
27 COMMUNITY FOR MORE THAN SEVENTY-TWO HOURS, THE ASSOCIATION

1 SHALL:

2 (a) PROVIDE AN ELECTRONIC OR WRITTEN NOTICE TO EACH UNIT
3 OWNER, WHICH NOTICE IS PROVIDED AS SOON AS REASONABLY POSSIBLE
4 AND INCLUDES:

5 (I) A SIMPLE EXPLANATION OF THE REASON FOR THE RESTRICTION
6 OR PROHIBITION;

7 (II) AN INDICATION OF THE ESTIMATED TIME OR DATE UPON WHICH
8 THE RESTRICTION OR PROHIBITION WILL NO LONGER EXIST; AND

9 (III) A TELEPHONE NUMBER OR E-MAIL ADDRESS WHEREBY A UNIT
10 OWNER MAY POSE QUESTIONS OR CONCERNS ABOUT THE RESTRICTION OR
11 PROHIBITION FOR THE CONSIDERATION OF THE ASSOCIATION; AND

12 (b) POST A VISIBLE, CLEARLY LEGIBLE NOTICE AT EACH PHYSICAL
13 ACCESS POINT TO THE COMMON ELEMENT, WHICH NOTICE REMAINS POSTED
14 FOR THE DURATION OF THE RESTRICTION OR PROHIBITION AND INCLUDES
15 THE ELEMENTS DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION.

16 **SECTION 3.** In Colorado Revised Statutes, 38-33.3-307, **add** (4)
17 as follows:

18 **38-33.3-307. Upkeep of the common interest community.**

19 (4) IN MAINTAINING, REPAIRING, OR REPLACING COMMON ELEMENTS AS
20 REQUIRED BY SUBSECTION (1) OF THIS SECTION, AN ASSOCIATION SHALL
21 COMPLY WITH SECTION 38-33.3-302.5 CONCERNING UNIT OWNERS'
22 ACCESS TO COMMON ELEMENTS.

23 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-216, **amend**
24 (2) introductory portion as follows:

25 **38-33.3-216. Easement rights.** (2) In a planned community,
26 subject to the provisions of the declaration and the ability of the
27 association to regulate and convey or encumber the common elements as

1 set forth in sections 38-33.3-302 (1)(f), ~~38-33.3-302.5~~, and 38-33.3-312,
2 the unit owners have an easement:

3 **SECTION 5. Act subject to petition - effective date -**
4 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
5 the expiration of the ninety-day period after final adjournment of the
6 general assembly; except that, if a referendum petition is filed pursuant
7 to section 1 (3) of article V of the state constitution against this act or an
8 item, section, or part of this act within such period, then the act, item,
9 section, or part will not take effect unless approved by the people at the
10 general election to be held in November 2022 and, in such case, will take
11 effect on the date of the official declaration of the vote thereon by the
12 governor.

13 (2) This act applies to unit owners' associations' regulation of the
14 use of common elements of a common interest community by unit owners
15 and their guests on and after the applicable effective date of this act.