

CHAPTER 84

PROPERTY

SENATE BILL 95-198

BY SENATOR Wattenberg;
also REPRESENTATIVES Taylor and Sullivant.**AN ACT****CONCERNING REQUIREMENTS UNDER WHICH LARGE PLANNED COMMUNITIES MAY BE DEVELOPED UNDER THE "COLORADO COMMON INTEREST OWNERSHIP ACT".***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** 38-33.3-103, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:**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:

(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.

SECTION 2. The introductory portion to 38-33.3-116.3 (1) and 38-33.3-116.3 (1) (b), (1) (c), and (5), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended, and the said 38-33.3-116.3 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:**38-33.3-116.3. Large planned communities - exemption from certain requirements.** (1) ~~Any parcel of land~~ 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,

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

THE REAL ESTATE UPON WHICH THE PLANNED COMMUNITY IS CREATED MEETS BOTH OF THE FOLLOWING REQUIREMENTS:

(b) It is ~~zoned~~ APPROVED for development of at least ~~two~~ FIVE hundred ~~residences~~ 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. ~~at the time of recording the affidavit required pursuant to subsection (2) of this section; and~~

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

(5) (a) The exemption authorized by this section shall continue for the ~~whole of the parcel described in subsection (2) of this section~~ LARGE PLANNED COMMUNITY so long as the owner signing the affidavit is the owner of ~~all of said parcel~~ THE REAL ESTATE DESCRIBED IN SUBSECTION (2) OF THIS SECTION; EXCEPT THAT:

(I) Upon the sale, conveyance, or other transfer of any ~~part of such parcel~~ 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; ~~but any such portion shall remain subject to any recorded declarations established prior to the sale, conveyance, or transfer.~~

(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.

(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.

SECTION 3. 38-33.3-205 (1), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

38-33.3-205. Contents of declaration. (1) The declaration must contain:

(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.

SECTION 4. 38-33.3-207 (4) (a) (IV), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

38-33.3-207. Allocation of allocated interests. (4) (a) The declaration may provide:

(IV) For large planned communities created after July 1, 1994, 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. ~~and specified services within such large planned community.~~

SECTION 5. 38-33.3-303 (5) (a), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended, and the said 38-33.3-303 (5) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

38-33.3-303. Executive board members and officers. (5) (a) Subject to subsection (6) of this section:

(I) The declaration, EXCEPT A DECLARATION FOR A LARGE PLANNED COMMUNITY, may provide for a period of declarant control of the association, during which period a declarant, or persons designated by such declarant, may appoint and remove the officers and members of the executive board. Regardless of the period of declarant control provided in the declaration, a period of declarant control terminates no later than either sixty days after conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant, two years after the last conveyance of a unit by the declarant in the ordinary course of business, or two years after any right to add new units was last exercised. ~~except that the two-year provisions shall not apply to terminate declarant control in a large planned community.~~

(II) THE DECLARATION FOR A LARGE PLANNED COMMUNITY MAY PROVIDE FOR A PERIOD OF DECLARANT CONTROL OF THE ASSOCIATION DURING WHICH PERIOD A

DECLARANT, OR PERSONS DESIGNATED BY SUCH DECLARANT, MAY APPOINT AND REMOVE THE OFFICERS AND MEMBERS OF THE EXECUTIVE BOARD. REGARDLESS OF THE PERIOD OF DECLARANT CONTROL PROVIDED IN THE DECLARATION, A PERIOD OF DECLARANT CONTROL TERMINATES IN A LARGE PLANNED COMMUNITY NO LATER THAN THE EARLIER OF SIXTY DAYS AFTER CONVEYANCE OF SEVENTY-FIVE PERCENT OF THE MAXIMUM NUMBER OF UNITS THAT MAY BE CREATED UNDER ZONING OR OTHER GOVERNMENTAL DEVELOPMENT APPROVALS IN EFFECT FOR THE LARGE PLANNED COMMUNITY AT ANY GIVEN TIME TO UNIT OWNERS OTHER THAN A DECLARANT, SIX YEARS AFTER THE LAST CONVEYANCE OF A UNIT BY THE DECLARANT IN THE ORDINARY COURSE OF BUSINESS, OR TWENTY YEARS AFTER RECORDATION OF THE DECLARATION.

(c) IF A PERIOD OF DECLARANT CONTROL IS TO TERMINATE IN A LARGE PLANNED COMMUNITY PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (5), THE DECLARANT, OR PERSONS DESIGNATED BY THE DECLARANT, SHALL NO LONGER HAVE THE RIGHT TO APPOINT AND REMOVE THE OFFICERS AND MEMBERS OF THE EXECUTIVE BOARD UNLESS, PRIOR TO THE TERMINATION DATE, THE ASSOCIATION APPROVES AN EXTENSION OF THE DECLARANT'S ABILITY TO APPOINT AND REMOVE NO MORE THAN A MAJORITY OF THE EXECUTIVE BOARD BY VOTE OF A MAJORITY OF THE VOTES ENTITLED TO BE CAST IN PERSON OR BY PROXY, OTHER THAN BY THE DECLARANT, AT A MEETING DULY CONVENED AS REQUIRED BY LAW. ANY SUCH APPROVAL BY THE ASSOCIATION MAY CONTAIN CONDITIONS AND LIMITATIONS. SUCH EXTENSION OF DECLARANT'S APPOINTMENT AND REMOVAL POWER, TOGETHER WITH ANY CONDITIONS AND LIMITATIONS APPROVED AS PROVIDED IN THIS PARAGRAPH (c), SHALL BE INCLUDED IN AN AMENDMENT TO THE DECLARATION PREVIOUSLY EXECUTED BY DECLARANT.

SECTION 6. 38-33.3-303 (9) (k) and (9) (l), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended, and the said 38-33.3-303 (9) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

38-33.3-303. Executive board members and officers. (9) Within sixty days after the unit owners other than the declarant elect a majority of the members of the executive board, the declarant shall deliver to the association all property of the unit owners and of the association held by or controlled by the declarant, including without limitation the following items:

(k) Employment contracts in which the association is a contracting party; ~~and~~

(l) Any service contract in which the association is a contracting party or in which the association or the unit owners have any obligation to pay a fee to the persons performing the services; AND

(m) FOR LARGE PLANNED COMMUNITIES, COPIES OF ALL RECORDED DEEDS AND ALL RECORDED AND UNRECORDED LEASES EVIDENCING OWNERSHIP OR LEASEHOLD RIGHTS OF THE LARGE PLANNED COMMUNITY UNIT OWNERS' ASSOCIATION IN ALL COMMON ELEMENTS WITHIN THE LARGE PLANNED COMMUNITY.

SECTION 7. Effective date. This act shall take effect July 1, 1995.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 17, 1995