

CHAPTER 182

PROPERTY

HOUSE BILL 24-1383

BY REPRESENTATIVE(S) Lindstedt, Bird, Duran, McCormick, Snyder, Valdez, Weinberg, Woodrow;
also SENATOR(S) Michaelson Jenet, Priola.

AN ACT

**CONCERNING DECLARATIONS THAT FORM COMMON INTEREST COMMUNITIES UNDER THE
"COLORADO COMMON INTEREST OWNERSHIP ACT".**

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

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) In *FD Interests, LLC v. Fairways at Buffalo Run Homeowners Association, Inc.*, 2019 COA 148, 490 P.3d 496, the Colorado court of appeals held that the recording of a declaration executed by an affiliate of the owner of real property that was intended to be included in a common interest community pursuant to section 38-33.3-201, Colorado Revised Statutes, but not executed by the owner of the property, was effective to create the common interest community and to govern the future use and development of the property. In that case, the court of appeals held that the trial court had erred in reforming the recorded declaration to include the owner's signature because the declaration had been validly executed by the owner's affiliate and reformation was unnecessary.

(b) With this act, the general assembly intends to clarify, for parties that currently have an interest in real property or that may acquire an interest in real property, that, like other documents purporting to affect title to or use of real property in the absence of specific statutory authority allowing execution by another person, a declaration that creates a common interest community, and any amendment to a declaration that adds real property to an existing common interest community, must be executed by or on behalf of the record owner of the real property to be included in the common interest community. The general assembly further intends to confirm that the equitable remedy of reformation should, in appropriate situations, in accordance with principles of equity, and with due regard for all affected interests,

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

be available to correct errors relating to the execution or contents of documents affecting real property.

SECTION 2. In Colorado Revised Statutes, 38-33.3-201, **amend** (1) as follows:

38-33.3-201. Creation of common interest communities. (1) (a) A common interest community may be created pursuant to this ~~article~~ ARTICLE 33.3 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:

(I) EXECUTED BY OR WITH THE EXPRESS WRITTEN AUTHORIZATION OF THE OWNER OR OWNERS OF THE REAL ESTATE THAT IS TO BE INCLUDED IN THE COMMON INTEREST COMMUNITY, AS SHOWN BY THE RECORDS OF THE COUNTY CLERK AND RECORDER'S OFFICE OF THE COUNTY WHERE THE REAL ESTATE IS LOCATED;

(II) Recorded in every county in which any portion of the common interest community is located; ~~and must be~~

(III) Indexed in the grantee's index in the name of the common interest community and in the name of the association; and

(IV) INDEXED in the grantor's index in the name of each person executing the declaration.

(b) No common interest community is created until the plat or map for the common interest community is recorded.

SECTION 3. In Colorado Revised Statutes, 38-33.3-217, **amend** (3) as follows:

38-33.3-217. Amendment of declaration. (3) ANY AMENDMENT TO A DECLARATION THAT ADDS REAL ESTATE TO A COMMON INTEREST COMMUNITY MUST BE EXECUTED BY OR WITH THE EXPRESS WRITTEN AUTHORIZATION OF THE OWNER OR OWNERS OF THE REAL ESTATE TO BE ADDED, AS SHOWN BY THE RECORDS OF THE COUNTY CLERK AND RECORDER'S OFFICE OF THE COUNTY WHERE THE REAL ESTATE IS LOCATED. 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.

SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to declarations that are executed or amended on or after the effective date of this act.

Approved: May 15, 2024