

## CHAPTER 177

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**PROPERTY**

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**HOUSE BILL 93-1070**

BY REPRESENTATIVES Kerns, Coffman, Kaufman, and Williams;  
also SENATORS Schroeder, Mares, Blickensderfer, and Feeley.

**AN ACT**

**CONCERNING AMENDMENTS TO THE "COLORADO COMMON INTEREST OWNERSHIP ACT", FURTHER  
DEFINING THE APPLICABILITY AND EFFECT THEREOF.**

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

**SECTION 1.** The introductory portion to 38-33.3-103 and 38-33.3-103 (8) and (25), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended, and the said 38-33.3-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**38-33.3-103. Definitions.** As used in ~~this article~~, THE DECLARATION AND BYLAWS OF AN ASSOCIATION, UNLESS SPECIFICALLY PROVIDED OTHERWISE OR unless the context otherwise requires, ~~or unless otherwise provided in the declaration and bylaws of an association~~ AND IN THIS ARTICLE:

(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 ~~thirty~~ FORTY years, including renewal options. The period of the leasehold interest, including renewal options, is measured from the date the initial term commences.

(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.

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

(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.

(22.5) "PLAT" MEANS THAT PART OF A DECLARATION THAT IS A LAND SURVEY PLAT AS SET FORTH IN SECTION 38-51-102, 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.

(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 custom, usage, or law, 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 ~~upper or lower~~ HORIZONTAL boundaries and spaces that may be filled with air or water.

(32) "VERTICAL BOUNDARY" MEANS THE DEFINED LIMIT OF A UNIT THAT IS NOT A HORIZONTAL BOUNDARY OF THAT UNIT.

**SECTION 2.** 38-33.3-105 (1) and (2), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended to read:

**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.

**SECTION 3.** 38-33.3-112 (2) (b), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-33.3-112. Unconscionable agreement or term of contract.** (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:

(b) Whether the first party has knowingly taken advantage of the inability of the second party reasonably to protect such ~~first~~ SECOND party's interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

**SECTION 4.** 38-33.3-115, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**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. ~~and, for such purposes, the definitions of section 38-33-103 shall control.~~

**SECTION 5.** 38-33.3-116, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-33.3-116. Exception for new small cooperatives and small and limited expense planned communities.** If a cooperative created in this state on or after July 1, 1992, 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 ~~38-33.3-106~~ 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, 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.

**SECTION 6.** 38-33.3-117, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-33.3-117. Applicability to preexisting common interest communities.** (1) Except as provided in section 38-33.3-119, ~~sections 38-33.3-105 to 38-33.3-107, 38-33.3-203, 38-33.3-204, 38-33.3-302 (1) (a) to (1) (f), (1) (j) to (1) (m), and (1) (o) to (1) (q), 38-33.3-311, 38-33.3-316, 38-33.3-318, and the definitions in section 38-33.3-103, to the extent necessary in construing any of those sections, THE FOLLOWING SECTIONS SHALL apply to all common interest communities created within this state before July 1, 1992, except that those sections apply only 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) 38-33.3-317 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 ~~and do not invalidate~~ provisions of any declaration, bylaws, PLAT, or ~~plats or maps~~ 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.

**SECTION 7.** The introductory portion to 38-33.3-118 (1) and 38-33.3-118 (1) (a), (2) (c), and (2) (e), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended to read:

**38-33.3-118. Procedure to elect treatment under the "Colorado Common Interest Ownership Act".** (1) Any ~~association organized in the same manner as an association under sections 38-33.3-103 (3) and 38-33.3-301 and organized~~ 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 ~~two-thirds~~ SIXTY-SEVEN PERCENT of the votes that the persons present at such meeting in person or by proxy are entitled to cast.

(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:

(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 ~~two-thirds~~ SIXTY-SEVEN PERCENT of the votes that the members or stockholders present at such meeting in person or by proxy were entitled to cast;

(e) ~~That the association has complied with the requirements of its articles of incorporation, declaration, bylaws, and other governing documents so far as applicable in affecting such acceptance;~~

**SECTION 8.** 38-33.3-201, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**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 ~~by the recording of a declaration until the plat and OR map for the common interest community are IS recorded. as a part of the declaration.~~

(2) In a common interest community with horizontal unit boundaries, a declaration, or an amendment to a declaration, ~~adding units may not be recorded unless~~ 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. ~~in accordance with the plans, as evidenced by a recorded certificate of completion executed by an independent licensed or registered engineer, surveyor, or architect.~~

**SECTION 9.** 38-33.3-204, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-33.3-204. Description of units.** A description of a unit ~~which sets~~ 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 ~~the~~ A legally sufficient description of a unit.

**SECTION 10.** 38-33.3-205 (1) (h) and (1) (n), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended to read:

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

(h) A description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies and ~~a~~ THE time limit within which each of those rights must be exercised; ~~which time limit shall not exceed ten years;~~

(n) All matters required by sections ~~38-33.3-206~~ 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);

**SECTION 11.** 38-33.3-207 (1), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**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.

**SECTION 12.** 38-33.3-209 (2) (a), (2) (f), (2) (g), (3), and (4) (b), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended to read:

**38-33.3-209. Plats and maps.** (2) In addition to meeting the requirements of a land survey plat as set forth in section 38-51-102, each plat must show:

(a) The name and a general schematic ~~map~~ PLAN of the entire common interest community;

(f) The location and dimensions of any vertical ~~unit~~ 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 ~~unit~~ boundaries, if any, not shown or projected on maps recorded pursuant to subsection (4) of this section, and that unit's identifying number;

~~(3) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common interest community. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT".~~

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

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

**SECTION 13.** 38-33.3-210 (5), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-33.3-210. Exercise of development rights.** (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.

**SECTION 14.** 38-33.3-217 (1), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-33.3-217. Amendment of declaration.** (1) Except in cases of amendments that may be executed by a declarant under section 38-33.3-208 (3), 38-33.3-209 (6), ~~or~~ 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 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.

**SECTION 15.** 38-33.3-218 (1), (5), (6), and (8), the introductory portion to 38-33.3-218 (9), and 38-33.3-218 (9) (b) and (10) (a), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended to read:

**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 ~~two-thirds~~ 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.

(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 ~~condominium or~~ planned community, if ~~the real estate constituting~~ ALL OR A PORTION OF the common ~~interest community is~~ ELEMENTS ARE not to be sold following termination, title to the common elements ~~and, in a common interest community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the common interest community;~~ NOT SOLD vests in the unit owners upon termination as tenants in common in ~~proportion to~~ 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.

(8) ~~Following~~ UPON termination of a condominium or planned community, creditors of the association ~~holding liens on the units, which were perfected as a result of a judgment before termination, may enforce those liens in the same manner as any lienholder. All other creditors of the association~~ WHO OBTAIN A LIEN AND DULY RECORD IT IN EVERY COUNTY IN WHICH ANY PORTION OF THE COMMON INTEREST COMMUNITY IS LOCATED are to be treated as if they had perfected liens on the units immediately before termination OR WHEN THE LIEN IS OBTAINED AND RECORDED, WHICHEVER IS LATER.

(9) In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, ~~following~~ UPON termination, creditors of the association ~~holding liens on the cooperative which were perfected as a result of judgments before termination may enforce their liens in the same manner as any lienholder, and any other creditor of the association is~~ WHO OBTAIN A LIEN AND DULY RECORD IT IN EVERY COUNTY IN WHICH ANY PORTION OF THE COOPERATIVE IS LOCATED ARE to be treated as if ~~such creditor~~ THEY had perfected ~~a lien~~ LIENS against the cooperative immediately before termination OR WHEN THE LIEN IS OBTAINED AND RECORDED, WHICHEVER IS LATER. Unless the declaration provides that all creditors of the association have that priority:

(b) Any other creditor of the association WHO OBTAINS A LIEN AND DULY RECORDS IT IN EVERY COUNTY IN WHICH ANY PORTION OF THE COOPERATIVE IS LOCATED is to be treated upon termination as if the creditor had perfected a lien against each unit owner's interest immediately before termination OR WHEN THE LIEN IS OBTAINED AND RECORDED, WHICHEVER IS LATER;

(10) The respective interests of unit owners referred to in subsections (5) to (9) of this section are as follows:

(a) Except as provided in paragraph (b) of this subsection (10), the respective interests of unit owners are the COMBINED fair market values of their units, allocated interests, ~~and~~ any limited common elements, AND, IN THE CASE OF A PLANNED COMMUNITY, ANY TENANT IN COMMON INTEREST, immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within thirty days after distribution by unit owners

of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

**SECTION 16.** 38-33.3-303 (7), (8), and (9) (e), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended to read:

**38-33.3-303. Executive board members and officers.** (7) Except as otherwise provided in section 38-33.3-220 (5), not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners other than the declarant or designated representatives of unit owners other than the declarant. The executive board shall elect the officers. The executive board members and officers shall take office upon ~~termination of the period of declarant control~~ ELECTION.

(8) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a ~~two-thirds~~ vote OF SIXTY-SEVEN PERCENT of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

(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:

(e) A copy, FOR THE NONEXCLUSIVE USE BY THE ASSOCIATION, of any plans and specifications used in the construction of the improvements in the common interest community; ~~which were completed within two years before the declaration was recorded;~~

**SECTION 17.** 38-33.3-307 (2), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-33.3-307. Upkeep of the common interest community.** (2) In addition to the liability that a declarant as a unit owner has under this article, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant. IF THE DECLARANT FAILS TO PAY ALL EXPENSES IN CONNECTION WITH REAL ESTATE WITHIN THE COMMON INTEREST COMMUNITY SUBJECT TO DEVELOPMENT RIGHTS, THE ASSOCIATION MAY PAY SUCH EXPENSES, AND SUCH EXPENSES SHALL BE ASSESSED AS A COMMON EXPENSE AGAINST THE REAL ESTATE SUBJECT TO DEVELOPMENT RIGHTS, AND THE ASSOCIATION MAY ENFORCE THE ASSESSMENT PURSUANT TO SECTION 38-33.3-316 BY TREATING SUCH REAL ESTATE AS IF IT WERE A UNIT. IF THE ASSOCIATION ACQUIRES TITLE TO THE REAL ESTATE SUBJECT TO THE DEVELOPMENT RIGHTS THROUGH FORECLOSURE OR OTHERWISE, THE DEVELOPMENT RIGHTS SHALL NOT BE EXTINGUISHED THEREBY, AND, THEREAFTER, THE ASSOCIATION MAY SUCCEED TO ANY SPECIAL DECLARANT RIGHTS SPECIFIED IN A

WRITTEN INSTRUMENT PREPARED, EXECUTED, AND RECORDED BY THE ASSOCIATION IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 38-33.3-304 (3).

**SECTION 18.** 38-33.3-312 (1) and (5), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended to read:

**38-33.3-312. Conveyance or encumbrance of common elements.** (1) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent, or, in the case of an association with over one thousand unit owners, ~~sixty-five~~ SIXTY-SEVEN percent, of the votes in the association, including eighty percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; except that all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(5) Unless in compliance with this section, any purported conveyance, encumbrance, judicial sale, or other ~~voluntary~~ transfer of common elements or any other part of a cooperative is void.

**SECTION 19.** 38-33.3-314, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-33.3-314. Surplus funds.** Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of or provision for reserves shall be ~~credited~~ PAID to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

**SECTION 20.** 38-33.3-315 (6), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-33.3-315. Assessments for common expenses.** (6) EACH UNIT OWNER IS LIABLE FOR ASSESSMENTS MADE AGAINST SUCH OWNER'S UNIT DURING THE PERIOD OF OWNERSHIP OF SUCH UNIT. No unit owner may be exempt from liability for payment of the ~~common expense~~ ASSESSMENTS by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit against which the assessments are made.

**SECTION 21.** 38-33.3-316 (1), (2) (b), (4), and (8), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended, and the said 38-33.3-316 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**38-33.3-316. Lien for assessments.** (1) The association, if such association is incorporated, has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. ~~from the time the assessment or fine becomes due.~~ Unless the declaration otherwise provides, fees, charges, late charges, attorney fees, fines, and interest charged pursuant to section 38-33.3-302 (1) (j), (1) (k), and (1) (l), section 38-33.3-313 (6), and section 38-33.3-315 (2) are enforceable as

assessments under this ARTICLE. THE AMOUNT OF THE LIEN SHALL INCLUDE ALL THOSE ITEMS SET FORTH IN THIS SECTION FROM THE TIME SUCH ITEMS BECOME DUE. If an assessment is payable in installments, ~~the full amount of the assessment~~ EACH INSTALLMENT is a lien from the time ~~the first installment thereof becomes due~~ IT BECOMES DUE, INCLUDING THE DUE DATE SET BY ANY VALID ASSOCIATION ACCELERATION OF INSTALLMENT OBLIGATIONS.

(2) (b) SUBJECT TO PARAGRAPH (d) OF THIS SUBSECTION (2), a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of:

(I) An amount equal to the common expense assessments based on a periodic budget adopted by the association under section 38-33.3-315 (1) which would have become due, in the absence of any acceleration, during the six months immediately preceding institution BY EITHER THE ASSOCIATION OR ANY PARTY HOLDING A LIEN SENIOR TO ANY PART OF THE ASSOCIATION LIEN CREATED UNDER THIS SECTION OF an action OR A NONJUDICIAL FORECLOSURE EITHER to enforce OR TO EXTINGUISH the lien. ~~but in no event shall the priority accorded under this subsection (2) to such lien exceed one hundred fifty percent of the average monthly assessment during the immediately preceding fiscal year multiplied by six;~~

(II) ~~Attorney fees and costs being incurred in an action to enforce the lien.~~

(d) THE ASSOCIATION SHALL HAVE THE STATUTORY LIEN DESCRIBED IN SUBSECTION (1) OF THIS SECTION FOR ANY ASSESSMENT LEVIED OR FINE IMPOSED AFTER JUNE 30, 1992. SUCH LIEN SHALL HAVE THE PRIORITY DESCRIBED IN THIS SUBSECTION (2) IF THE OTHER LIEN OR ENCUMBRANCE IS CREATED AFTER JUNE 30, 1992.

(4) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for ~~assessment under this section~~ ASSESSMENTS is required.

(8) The association shall furnish to a unit owner or such unit owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the association's registered agent, a WRITTEN statement setting forth the amount of unpaid assessments currently levied against such owner's unit. The statement shall be furnished within fourteen ~~business~~ CALENDAR days after receipt of the request and is binding on the association, the executive board, and every unit owner. If no statement is furnished to the unit owner or holder of a security interest or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the association shall have no right to assert a ~~priority~~ lien upon the unit for unpaid assessments which were due as of the date of the request.

**SECTION 22.** 39-1-103 (10), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**39-1-103. Actual value determined - when.** (10) ~~Property owned by a qualified nonprofit homeowners' organization for the benefit of its members shall not be appraised and valued separately but shall be appraised and valued with the residential~~

~~real property owned by the members of the organization who are entitled to the exclusive use, benefit, and enjoyment of the property owned by the organization. An organization qualifies as a nonprofit homeowners' organization if it is a Colorado nonprofit corporation, it is organized and operated to provide for the management and maintenance of organization property, membership in the organization is mandatory, and the subdivision plat covering the organization's property is filed of record in the county in which the property is situated. This subsection (10) shall not apply to condominiums created under the "Condominium Ownership Act", article 33 of title 38, C.R.S. COMMON PROPERTY OR COMMON ELEMENTS WITHIN A COMMON INTEREST COMMUNITY AS DEFINED IN THE "COLORADO COMMON INTEREST OWNERSHIP ACT", ARTICLE 33.3 OF TITLE 38, C.R.S., SHALL BE APPRAISED AND VALUED PURSUANT TO THE PROVISIONS OF SECTION 38-33.3-105, C.R.S.~~

**SECTION 23. 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 30, 1993