

CHAPTER 353

**PROPERTY**

SENATE BILL 94-216

BY SENATORS Wattenberg, Mutzebaugh, and Schroeder;  
also REPRESENTATIVE Williams.

**AN ACT**

**CONCERNING CERTAIN REQUIREMENTS FOR THE DEVELOPMENT OF LARGE PLANNED COMMUNITIES 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:

(17.5) "LARGE PLANNED COMMUNITY" MEANS A PLANNED COMMUNITY THAT MEETS THE CRITERIA SET FORTH IN SECTION 38-33.3-116.3 (1).

**SECTION 2.** Article 33.3 of title 38, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**38-33.3-116.3. Large planned communities - exemption from certain requirements.** (1) ANY PARCEL OF LAND SHALL BE EXEMPT FROM THE PROVISIONS OF THIS ARTICLE AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION OR AS SPECIFICALLY EXEMPTED IN ANY PROVISION OF THIS ARTICLE, IF:

- (a) IT CONSISTS OF AT LEAST TWO HUNDRED ACRES;
- (b) IT IS ZONED FOR DEVELOPMENT OF AT LEAST TWO HUNDRED RESIDENCES 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;

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

AND

(c) IT MEETS THE DEFINITION OF A PLANNED COMMUNITY PURSUANT TO SECTION 38-33.3-103 (22).

(2) FOR AN EXEMPTION AUTHORIZED IN SUBSECTION (1) OF THIS SECTION TO APPLY, THE PROPERTY MUST BE ZONED WITHIN EACH COUNTY IN WHICH ANY PART OF SUCH PARCEL IS LOCATED, AND THE OWNER OF THE PARCEL SHALL RECORD WITH THE COUNTY CLERK AND RECORDER OF EACH COUNTY IN WHICH ANY PART OF SUCH PARCEL IS LOCATED AN AFFIDAVIT SETTING FORTH THE FOLLOWING:

(a) THE LEGAL DESCRIPTION OF SUCH PARCEL OF LAND;

(b) A STATEMENT THAT THE PARTY SIGNING THE AFFIDAVIT IS THE OWNER OF THE PARCEL IN ITS ENTIRETY IN FEE SIMPLE, EXCLUDING MINERAL INTERESTS;

(c) THE ACREAGE OF THE PARCEL;

(d) THE ZONING CLASSIFICATION OF THE PARCEL, WITH A CERTIFIED COPY OF APPLICABLE ZONING REGULATIONS ATTACHED; AND

(e) A STATEMENT THAT NEITHER THE OWNER NOR ANY OFFICER, DIRECTOR, SHAREHOLDER, PARTNER, OR OTHER ENTITY HAVING MORE THAN A TEN-PERCENT EQUITY INTEREST IN THE OWNER HAS BEEN CONVICTED OF A FELONY WITHIN THE LAST TEN YEARS.

(3) A LARGE PLANNED COMMUNITY FOR WHICH AN AFFIDAVIT HAS BEEN FILED PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL BE EXEMPT FROM THE FOLLOWING PROVISIONS OF THIS ARTICLE:

(a) SECTION 38-33.3-205 (1) (e) TO (1) (m);

(b) SECTION 38-33.3-207 (3);

(c) SECTION 38-33.3-208;

(d) SECTION 38-33.3-209 (2) (b), (2) (c), (2) (d), (2) (f), (2) (g), (4), AND (6);

(e) SECTION 38-33.3-210;

(f) SECTION 38-33.3-212;

(g) SECTION 38-33.3-213;

(h) SECTION 38-33.3-215;

(i) SECTION 38-33.3-217 (1);

(j) SECTION 38-33.3-304.

(4) SECTION 38-33.3-217 (4) SHALL BE APPLICABLE AS FOLLOWS: EXCEPT TO THE

EXTENT EXPRESSLY PERMITTED OR REQUIRED BY OTHER PROVISIONS OF THIS ARTICLE, NO AMENDMENT MAY CREATE OR INCREASE SPECIAL DECLARANT RIGHTS, INCREASE THE NUMBER OF UNITS OR THE ALLOCATED INTERESTS OF A UNIT, OR THE USES TO WHICH ANY UNIT IS RESTRICTED, IN THE ABSENCE OF UNANIMOUS CONSENT OF THE UNIT OWNERS.

(5) THE EXEMPTION AUTHORIZED BY THIS SECTION SHALL CONTINUE FOR THE WHOLE OF THE PARCEL DESCRIBED IN SUBSECTION (2) OF THIS SECTION SO LONG AS THE OWNER SIGNING THE AFFIDAVIT IS THE OWNER OF ALL OF SAID PARCEL. UPON THE SALE, CONVEYANCE, OR OTHER TRANSFER OF ANY PART OF SUCH PARCEL, 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.

(6) THE ASSOCIATION ESTABLISHED FOR A LARGE PLANNED COMMUNITY SHALL OPERATE WITH RESPECT TO LARGE PLANNED COMMUNITY-WIDE MATTERS AND SHALL NOT OTHERWISE OPERATE AS THE EXCLUSIVE UNIT OWNERS' ASSOCIATION WITH RESPECT TO ANY UNIT.

**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:

(p) A STATEMENT, IF APPLICABLE, THAT THE PLANNED COMMUNITY IS A LARGE PLANNED COMMUNITY AND IS EXERCISING CERTAIN EXEMPTIONS FROM THE "COLORADO COMMON INTEREST OWNERSHIP ACT" AS SUCH A LARGE PLANNED COMMUNITY.

**SECTION 4.** 38-33.3-207 (1) (c) and (4) (a), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended, and the said 38-33.3-207 (4) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

**38-33.3-207. Allocation of allocated interests.** (1) The declaration must allocate to each unit:

(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; EXCEPT THAT, IN A LARGE PLANNED COMMUNITY, THE COMMON EXPENSES OF THE ASSOCIATION MAY BE PAID FROM ASSESSMENTS AND ALLOCATED AS SET FORTH IN THE DECLARATION AND THE VOTES IN THE ASSOCIATION MAY BE ALLOCATED AS SET FORTH IN THE DECLARATION.

(4) (a) The declaration may provide:

(I) That different allocations of votes shall be made to the units on particular matters specified in the declaration;

(II) For cumulative voting only for the purpose of electing members of the

executive board; ~~and~~

(III) For class voting on specified issues affecting the class if necessary to protect valid interests of the class; AND

(IV) FOR LARGE PLANNED COMMUNITIES CREATED AFTER JULY 1, 1994, FOR ASSESSMENTS INCLUDING, BUT NOT LIMITED TO, ASSESSMENTS ON RETAIL SALES, REAL ESTATE TRANSFERS, AND SPECIFIED SERVICES WITHIN SUCH LARGE PLANNED COMMUNITY.

(c) ASSESSMENTS ALLOWED UNDER SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (4) SHALL BE ENTITLED TO THE LIEN PROVIDED FOR UNDER SECTION 38-33.3-316 (1) BUT SHALL NOT BE ENTITLED TO THE PRIORITY ESTABLISHED BY SECTION 38-33.3-316 (2) (b).

(d) LARGE PLANNED COMMUNITIES SPECIFYING CLASSES FOR VOTING IN THE DECLARATION AS ALLOWED PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (4) MAY DESIGNATE CLASSES OF MEMBERS ON A REASONABLE BASIS WHICH DO NOT ALLOW THE DECLARANT TO CONTROL THE ASSOCIATION BEYOND THE PERIOD PROVIDED FOR IN SECTION 38-33.3-303 OR TO CONTROL THE ASSOCIATION TO AN EXTENT GREATER THAN ALLOWED FOR PLANNED COMMUNITIES OTHER THAN LARGE PLANNED COMMUNITIES, INCLUDING, WITHOUT LIMITATION, RESIDENCE OWNERS, COMMERCIAL SPACE OWNERS, AND OWNERS OF LODGING SPACE AND TO ELECT MEMBERS TO THE ASSOCIATION EXECUTIVE BOARD FROM SUCH CLASSES.

**SECTION 5.** 38-33.3-303 (5) and (8), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended to read:

**38-33.3-303. Executive board members and officers.** (5) (a) Subject to subsection (6) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by ~~him~~ 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.

(b) A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of the period of declarant control, but, in that event, the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(8) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a 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 OR A MEMBER ELECTED PURSUANT TO A CLASS VOTE UNDER SECTION

38-33.3-207 (4).

**SECTION 6.** 38-33.3-315 (2), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**38-33.3-315. Assessments for common expenses.** (2) Except for assessments under subsections (3) and (4) of this section AND SECTION 38-33.3-207 (4) (a) (IV), all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section 38-33.3-207 (1) and (2). Any past-due common expense assessment or installment thereof shall bear interest at the rate established by the association not exceeding twenty-one percent per year.

**SECTION 7. Effective date.** This act shall take effect July 1, 1994.

**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: June 7, 1994