

CHAPTER 201

PROPERTY

SENATE BILL 99-221

BY SENATORS Lamborn and Weddig;
also REPRESENTATIVES Dean, Hoppe, Mace, McKay, Paschall, Plant, Scott, Taylor, Veiga, and S. Williams.

AN ACT

CONCERNING THE AMENDMENT OF THE DECLARATIONS OF A COMMON INTEREST COMMUNITY BY
PETITION TO THE DISTRICT COURT.

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

SECTION 1. 38-33.3-217 (1), Colorado Revised Statutes, is amended, and the said 38-33.3-217 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

38-33.3-217. Amendment of declaration. (1) Except in cases of amendments that may be executed by a declarant under section 38-33-205 (4) and (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210, or 38-33.3-222, ~~or by the~~ AN 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), OR BY THE DISTRICT COURT FOR ANY COUNTY THAT INCLUDES ALL OR ANY PORTION OF A COMMON INTEREST COMMUNITY UNDER SUBSECTION (7) OF THIS SECTION, 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 more than fifty 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.

(7) (a) THE ASSOCIATION, ACTING THROUGH ITS EXECUTIVE BOARD PURSUANT TO SECTION 38-33.3-303 (1), MAY PETITION THE DISTRICT COURT FOR ANY COUNTY THAT INCLUDES ALL OR ANY PORTION OF THE COMMON INTEREST COMMUNITY FOR AN ORDER AMENDING THE DECLARATION OF THE COMMON INTEREST COMMUNITY IF:

(I) THE ASSOCIATION HAS TWICE SENT NOTICE OF THE PROPOSED AMENDMENT TO ALL UNIT OWNERS THAT ARE ENTITLED BY THE DECLARATION TO VOTE ON THE

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

PROPOSED AMENDMENT OR ARE REQUIRED FOR APPROVAL OF THE PROPOSED AMENDMENT BY ANY MEANS ALLOWED PURSUANT TO THE PROVISIONS REGARDING NOTICE TO MEMBERS IN SECTIONS 7-121-402 AND 7-127-104, C.R.S., OF THE "COLORADO REVISED NONPROFIT CORPORATION ACT", ARTICLES 121 TO 137 OF TITLE 7, C.R.S.;

(II) THE ASSOCIATION HAS DISCUSSED THE PROPOSED AMENDMENT DURING AT LEAST ONE MEETING OF THE ASSOCIATION; AND

(III) UNIT OWNERS OF UNITS TO WHICH ARE ALLOCATED MORE THAN FIFTY PERCENT OF THE NUMBER OF CONSENTS, APPROVALS, OR VOTES OF THE ASSOCIATION THAT WOULD BE REQUIRED TO ADOPT THE PROPOSED AMENDMENT PURSUANT TO THE DECLARATION HAVE VOTED IN FAVOR OF THE PROPOSED AMENDMENT.

(b) A PETITION FILED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (7) SHALL INCLUDE:

(I) A SUMMARY OF:

(A) THE PROCEDURES AND REQUIREMENTS FOR AMENDING THE DECLARATION THAT ARE SET FORTH IN THE DECLARATION;

(B) THE PROPOSED AMENDMENT TO THE DECLARATION;

(C) THE EFFECT OF AND REASON FOR THE PROPOSED AMENDMENT, INCLUDING A STATEMENT OF THE CIRCUMSTANCES THAT MAKE THE AMENDMENT NECESSARY OR ADVISABLE;

(D) THE RESULTS OF ANY VOTE TAKEN WITH RESPECT TO THE PROPOSED AMENDMENT; AND

(E) ANY OTHER MATTERS THAT THE ASSOCIATION BELIEVES WILL BE USEFUL TO THE COURT IN DECIDING WHETHER TO GRANT THE PETITION; AND

(II) AS EXHIBITS, COPIES OF:

(A) THE DECLARATION AS ORIGINALLY RECORDED AND ANY RECORDED AMENDMENTS TO THE DECLARATION;

(B) THE TEXT OF THE PROPOSED AMENDMENT;

(C) COPIES OF ANY NOTICES SENT PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (7); AND

(D) ANY OTHER DOCUMENTS THAT THE ASSOCIATION BELIEVES WILL BE USEFUL TO THE COURT IN DECIDING WHETHER TO GRANT THE PETITION.

(c) WITHIN THREE DAYS OF THE FILING OF THE PETITION, THE DISTRICT COURT SHALL SET A DATE FOR HEARING THE PETITION. UNLESS THE COURT FINDS THAT AN EMERGENCY REQUIRES AN IMMEDIATE HEARING, THE HEARING SHALL BE HELD NO EARLIER THAN FORTY-FIVE DAYS AND NO LATER THAN SIXTY DAYS AFTER THE DATE

THE ASSOCIATION FILED THE PETITION.

(d) NO LATER THAN TEN DAYS AFTER THE DATE FOR HEARING A PETITION IS SET PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (7), THE ASSOCIATION SHALL:

(I) SEND NOTICE OF THE PETITION BY ANY WRITTEN MEANS ALLOWED PURSUANT TO THE PROVISIONS REGARDING NOTICE TO MEMBERS IN SECTIONS 7-121-402 AND 7-127-104, C.R.S., OF THE "COLORADO REVISED NONPROFIT CORPORATION ACT", ARTICLES 121 TO 137 OF TITLE 7, C.R.S., TO ANY UNIT OWNER, BY FIRST-CLASS MAIL, POSTAGE PREPAID OR BY HAND DELIVERY TO ANY DECLARANT, AND BY FIRST-CLASS MAIL, POSTAGE PREPAID, TO ANY LENDER THAT HOLDS A SECURITY INTEREST IN ONE OR MORE UNITS AND IS ENTITLED BY THE DECLARATION OR ANY UNDERWRITING GUIDELINES OR REQUIREMENTS OF THAT LENDER OR OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION, THE FEDERAL HOME LOAN MORTGAGE CORPORATION, THE FEDERAL HOUSING ADMINISTRATION, THE VETERANS ADMINISTRATION, OR THE GOVERNMENT NATIONAL MORTGAGE CORPORATION TO VOTE ON THE PROPOSED AMENDMENT. THE NOTICE SHALL INCLUDE:

(A) A COPY OF THE PETITION WHICH NEED NOT INCLUDE THE EXHIBITS ATTACHED TO THE ORIGINAL PETITION FILED WITH THE DISTRICT COURT;

(B) THE DATE THE DISTRICT COURT WILL HEAR THE PETITION; AND

(C) A STATEMENT THAT THE COURT MAY GRANT THE PETITION AND ORDER THE PROPOSED AMENDMENT TO THE DECLARATION UNLESS ANY DECLARANT ENTITLED BY THE DECLARATION TO VOTE ON THE PROPOSED AMENDMENT, THE FEDERAL HOUSING ADMINISTRATION, THE VETERANS ADMINISTRATION, MORE THAN THIRTY-THREE PERCENT OF THE UNIT OWNERS ENTITLED BY THE DECLARATION TO VOTE ON THE PROPOSED AMENDMENT, OR MORE THAN THIRTY-THREE PERCENT OF THE LENDERS THAT HOLD A SECURITY INTEREST IN ONE OR MORE UNITS AND ARE ENTITLED BY THE DECLARATION TO VOTE ON THE PROPOSED AMENDMENT FILE WRITTEN OBJECTIONS TO THE PROPOSED AMENDMENT WITH THE COURT PRIOR TO THE HEARING.

(II) FILE WITH THE DISTRICT COURT:

(A) A LIST OF THE NAMES AND MAILING ADDRESSES OF DECLARANTS, UNIT OWNERS, AND LENDERS THAT HOLD A SECURITY INTEREST IN ONE OR MORE UNITS AND THAT ARE ENTITLED BY THE DECLARATION TO VOTE ON THE PROPOSED AMENDMENT; AND

(B) A COPY OF THE NOTICE REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (d).

(e) THE DISTRICT COURT SHALL GRANT THE PETITION AFTER HEARING IF IT FINDS THAT:

(I) THE ASSOCIATION HAS COMPLIED WITH ALL REQUIREMENTS OF THIS SUBSECTION (7);

(II) NO MORE THAN THIRTY-THREE PERCENT OF THE UNIT OWNERS ENTITLED BY THE DECLARATION TO VOTE ON THE PROPOSED AMENDMENT HAVE FILED WRITTEN

OBJECTIONS TO THE PROPOSED AMENDMENT WITH THE COURT PRIOR TO THE HEARING;

(III) NEITHER THE FEDERAL HOUSING ADMINISTRATION NOR THE VETERANS ADMINISTRATION IS ENTITLED TO APPROVE THE PROPOSED AMENDMENT, OR IF SO ENTITLED HAS NOT FILED WRITTEN OBJECTIONS TO THE PROPOSED AMENDMENT WITH THE COURT PRIOR TO THE HEARING;

(IV) EITHER THE PROPOSED AMENDMENT DOES NOT ELIMINATE ANY RIGHTS OR PRIVILEGES DESIGNATED IN THE DECLARATION AS BELONGING TO A DECLARANT OR NO DECLARANT HAS FILED WRITTEN OBJECTIONS TO THE PROPOSED AMENDMENT WITH THE COURT PRIOR TO THE HEARING;

(V) EITHER THE PROPOSED AMENDMENT DOES NOT ELIMINATE ANY RIGHTS OR PRIVILEGES DESIGNATED IN THE DECLARATION AS BELONGING TO ANY LENDERS THAT HOLD SECURITY INTERESTS IN ONE OR MORE UNITS AND THAT ARE ENTITLED BY THE DECLARATION TO VOTE ON THE PROPOSED AMENDMENT OR NO MORE THAN THIRTY-THREE PERCENT OF SUCH LENDERS HAVE FILED WRITTEN OBJECTIONS TO THE PROPOSED AMENDMENT WITH THE COURT PRIOR TO THE HEARING; AND

(VI) THE PROPOSED AMENDMENT WOULD NEITHER TERMINATE THE DECLARATION NOR CHANGE THE ALLOCATED INTERESTS OF THE UNIT OWNERS AS SPECIFIED IN THE DECLARATION, EXCEPT AS ALLOWED PURSUANT TO SECTION 38-33.3-315.

(f) UPON GRANTING A PETITION, THE COURT SHALL ENTER AN ORDER APPROVING THE PROPOSED AMENDMENT AND REQUIRING THE ASSOCIATION TO RECORD THE AMENDMENT IN EACH COUNTY THAT INCLUDES ALL OR ANY PORTION OF THE COMMON INTEREST COMMUNITY. ONCE RECORDED, THE AMENDMENT SHALL HAVE THE SAME LEGAL EFFECT AS IF IT WERE ADOPTED PURSUANT TO ANY REQUIREMENTS SET FORTH IN THE DECLARATION.

SECTION 2. 38-33.3-117 (1) (h), Colorado Revised Statutes, is amended to read:

38-33.3-117. Applicability to preexisting common interest communities.

(1) Except as provided in section 38-33.3-119, the following sections shall apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after July 1, 1992:

(h) 38-33.3-203 AND 38-33.3-217 (7);

SECTION 3. 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: May 19, 1999