

CHAPTER 22

CORPORATIONS AND ASSOCIATIONS

HOUSE BILL 11-1110

BY REPRESENTATIVE(S) Acree, Balmer, Holbert, Massey, Murray, Solano, Kerr J., Priola, Todd;
also SENATOR(S) Harvey, Carroll, Renfroe, Aguilar, Heath, Newell, Steadman.

AN ACT

CONCERNING THE RIGHTS OF MEMBERS OF NONPROFIT CORPORATIONS IN WHICH RESIDENCY IS A QUALIFICATION FOR MEMBERSHIP.

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

SECTION 1. 7-121-401, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

7-121-401. General definitions. As used in articles 121 to 137 of this title, unless the context otherwise requires:

(16.5) "ENTRANCE FEE" MEANS ANY FEE OR CHARGE, INCLUDING A DAMAGE DEPOSIT, PAID BY A PERSON TO A RESIDENTIAL NONPROFIT CORPORATION IN ORDER TO BECOME A RESIDENT MEMBER. "ENTRANCE FEE" DOES NOT INCLUDE REGULAR PERIODIC PAYMENTS FOR THE PURCHASE OR LEASE OF RESIDENTIAL REAL ESTATE OR FOR THE DAY-TO-DAY USE OF FACILITIES OR SERVICES.

(32.5) "RESIDENTIAL MEMBER" MEANS A MEMBER OF A RESIDENTIAL NONPROFIT CORPORATION WHOSE STATUS AS A MEMBER IS DEPENDENT UPON, OR WHOSE MEMBERSHIP IS ACCORDED VOTING RIGHTS AS A RESULT OF, OWNING OR LEASING SPECIFIED RESIDENTIAL REAL ESTATE.

(33.5) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (33.5), "RESIDENTIAL NONPROFIT CORPORATION" MEANS A NONPROFIT CORPORATION THAT HAS RESIDENTIAL MEMBERS.

(b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (33.5), "RESIDENTIAL NONPROFIT CORPORATION" DOES NOT INCLUDE:

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

(I) A UNIT OWNERS' ASSOCIATION OR ANY OTHER ENTITY SUBJECT TO THE "COLORADO COMMON INTEREST OWNERSHIP ACT", ARTICLE 33.3 OF TITLE 38, C.R.S., REGARDLESS OF WHETHER IT WAS FORMED BEFORE, ON, OR AFTER JULY 1, 1992;

(II) A NURSING CARE FACILITY LICENSED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT UNDER SECTION 25-3-101, C.R.S.;

(III) AN ASSISTED LIVING RESIDENCE LICENSED UNDER SECTION 25-3-101, C.R.S.;

(IV) A LIFE CARE INSTITUTION REGULATED UNDER ARTICLE 13 OF TITLE 12, C.R.S.; OR

(V) A CONTINUING CARE RETIREMENT COMMUNITY, AS DESCRIBED IN SECTION 25.5-6-203, C.R.S., OPERATED BY AN ENTITY THAT IS LICENSED OR OTHERWISE SUBJECT TO STATE REGULATION.

SECTION 2. Part 3 of article 126 of title 7, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

7-126-304. Residential membership - return of consideration - cessation of periodic payments - time limits. (1) NOTWITHSTANDING ANY PROVISION OF THE ARTICLES OF INCORPORATION OR BYLAWS TO THE CONTRARY:

(a) A RESIDENTIAL NONPROFIT CORPORATION SHALL REFUND THE ENTRANCE FEE OF A RESIDENTIAL MEMBER TO THE MEMBER OR HIS OR HER HEIRS WITHIN NINETY DAYS AFTER THE MEMBER'S RESIGNATION, TERMINATION, EXPULSION, OR SUSPENSION FROM THE CORPORATION OR THE TRANSFER OF THE RESIDENTIAL MEMBERSHIP.

(b) IF THE MEMBERSHIP OF A RESIDENTIAL MEMBER IS TERMINATED DUE TO THE MEMBER'S DEATH OR FOR ANY OTHER REASON BEYOND THE MEMBER'S CONTROL, THE MEMBER OR HIS OR HER HEIRS ARE NOT LIABLE FOR ANY PERIODIC PAYMENTS COMING DUE MORE THAN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THE TERMINATION.

SECTION 3. 7-128-203, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

7-128-203. Notice of meeting - rights of residential members.

(3) NOTWITHSTANDING SUBSECTIONS (1) AND (2) OF THIS SECTION, AND NOTWITHSTANDING ANY PROVISION OF THE ARTICLES OF INCORPORATION OR BYLAWS TO THE CONTRARY, THE FOLLOWING RULES AND PROCEDURES APPLY TO MEETINGS OF THE BOARD OF DIRECTORS OF A RESIDENTIAL NONPROFIT CORPORATION OR ANY COMMITTEE OF THE BOARD:

(a) (I) ALL REGULAR AND SPECIAL MEETINGS OF THE RESIDENTIAL NONPROFIT CORPORATION'S BOARD OF DIRECTORS, OR ANY COMMITTEE OF THE BOARD, MUST BE OPEN TO ATTENDANCE BY ALL RESIDENTIAL MEMBERS OR THEIR REPRESENTATIVES. THE BOARD SHALL MAKE AGENDAS FOR MEETINGS OF THE BOARD REASONABLY AVAILABLE FOR EXAMINATION BY ALL RESIDENTIAL MEMBERS OR THEIR

REPRESENTATIVES.

(II) THE RESIDENTIAL NONPROFIT CORPORATION IS ENCOURAGED TO PROVIDE ALL NOTICES AND AGENDAS REQUIRED BY THIS ARTICLE IN ELECTRONIC FORM, BY POSTING ON A WEB SITE OR OTHERWISE, IN ADDITION TO PRINTED FORM. IF SUCH ELECTRONIC MEANS ARE AVAILABLE, THE CORPORATION SHALL PROVIDE NOTICE OF ALL REGULAR AND SPECIAL MEETINGS OF RESIDENTIAL MEMBERS BY ELECTRONIC MAIL TO ALL RESIDENTIAL MEMBERS WHO SO REQUEST AND WHO FURNISH THE CORPORATION WITH THEIR ELECTRONIC MAIL ADDRESSES. ELECTRONIC NOTICE OF A SPECIAL MEETING MUST BE GIVEN AS SOON AS POSSIBLE BUT AT LEAST TWENTY-FOUR HOURS BEFORE THE MEETING.

(b) AT AN APPROPRIATE TIME DETERMINED BY THE BOARD OF DIRECTORS, BUT BEFORE THE BOARD VOTES ON AN ISSUE UNDER DISCUSSION, THE BOARD SHALL PERMIT RESIDENTIAL MEMBERS OR THEIR DESIGNATED REPRESENTATIVES TO SPEAK REGARDING THE ISSUE. THE BOARD MAY PLACE REASONABLE TIME RESTRICTIONS ON PERSONS SPEAKING DURING THE MEETING. IF MORE THAN ONE PERSON DESIRES TO ADDRESS AN ISSUE AND THERE ARE OPPOSING VIEWS, THE BOARD SHALL PROVIDE FOR A REASONABLE NUMBER OF PERSONS TO SPEAK ON EACH SIDE OF THE ISSUE.

(c) THE BOARD OF DIRECTORS OR ANY COMMITTEE OF THE BOARD MAY HOLD AN EXECUTIVE OR CLOSED-DOOR SESSION AND MAY RESTRICT ATTENDANCE TO BOARD MEMBERS AND SUCH OTHER PERSONS REQUESTED BY THE BOARD DURING A REGULAR OR SPECIALLY ANNOUNCED MEETING OR A PART THEREOF. THE MATTERS TO BE DISCUSSED AT SUCH AN EXECUTIVE SESSION MAY INCLUDE ONLY MATTERS ENUMERATED IN PARAGRAPH (d) OF THIS SUBSECTION (3).

(d) MATTERS FOR DISCUSSION BY AN EXECUTIVE OR CLOSED SESSION ARE LIMITED TO:

(I) MATTERS PERTAINING TO EMPLOYEES OF THE RESIDENTIAL NONPROFIT CORPORATION OR THE MANAGING AGENT'S CONTRACT OR INVOLVING THE EMPLOYMENT, PROMOTION, DISCIPLINE, OR DISMISSAL OF AN OFFICER, AGENT, OR EMPLOYEE OF THE CORPORATION;

(II) CONSULTATION WITH LEGAL COUNSEL CONCERNING DISPUTES THAT ARE THE SUBJECT OF PENDING OR IMMINENT COURT PROCEEDINGS OR MATTERS THAT ARE PRIVILEGED OR CONFIDENTIAL BETWEEN ATTORNEY AND CLIENT;

(III) INVESTIGATIVE PROCEEDINGS CONCERNING POSSIBLE OR ACTUAL CRIMINAL MISCONDUCT;

(IV) MATTERS SUBJECT TO SPECIFIC CONSTITUTIONAL, STATUTORY, OR JUDICIALLY IMPOSED REQUIREMENTS PROTECTING PARTICULAR PROCEEDINGS OR MATTERS FROM PUBLIC DISCLOSURE;

(V) ANY MATTER THE DISCLOSURE OF WHICH WOULD CONSTITUTE AN UNWARRANTED INVASION OF INDIVIDUAL PRIVACY;

(VI) REVIEW OF OR DISCUSSION RELATING TO ANY WRITTEN OR ORAL COMMUNICATION FROM LEGAL COUNSEL.

(e) UPON THE FINAL RESOLUTION OF ANY MATTER FOR WHICH THE BOARD OF DIRECTORS RECEIVED LEGAL ADVICE OR THAT CONCERNED PENDING OR CONTEMPLATED LITIGATION, THE BOARD MAY ELECT TO PRESERVE THE ATTORNEY-CLIENT PRIVILEGE IN ANY APPROPRIATE MANNER, OR IT MAY ELECT TO DISCLOSE SUCH INFORMATION, AS IT DEEMS APPROPRIATE, ABOUT SUCH MATTER IN AN OPEN MEETING.

(f) BEFORE THE BOARD OF DIRECTORS OR ANY COMMITTEE OF THE BOARD CONVENES IN EXECUTIVE SESSION, THE CHAIR OF THE BODY SHALL ANNOUNCE THE GENERAL MATTER OF DISCUSSION AS ENUMERATED IN PARAGRAPH (d) OF THIS SUBSECTION (3).

(g) THE BOARD OF DIRECTORS SHALL NOT ADOPT ANY CHANGE TO THE RESIDENTIAL NONPROFIT CORPORATION'S ARTICLES OF INCORPORATION OR BYLAWS DURING AN EXECUTIVE SESSION. AN ARTICLES OF INCORPORATION OR BYLAW CHANGE MAY BE VALIDLY ADOPTED ONLY DURING A REGULAR OR SPECIAL MEETING OR AFTER THE BOARD OF DIRECTORS GOES BACK INTO REGULAR SESSION FOLLOWING AN EXECUTIVE SESSION.

(h) THE MINUTES OF ALL MEETINGS AT WHICH AN EXECUTIVE SESSION WAS HELD MUST INDICATE THAT AN EXECUTIVE SESSION WAS HELD AND THE GENERAL SUBJECT MATTER OF THE EXECUTIVE SESSION.

SECTION 4. 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: March 11, 2011