



POWERS PHILLIPS, P.C.

Board Members' Guide to SB100
Amendment to Colorado Revised Statutes
as of July 1, 2005

Prepared by Myra J. Lansky
Powers Phillips, P.C.
700 17th Street, Suite 1600
Denver, Colorado 80202
Direct 303.382.4166
Office 303.297.1900
Fax 303.293.8938
mlansky@ppbfh.com
www.ppbfh.com
© Powers Phillips, P.C. 2005

Disclaimer

These materials have been prepared by Powers Phillips, P.C. for informational purposes only and are not legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Readers should not act upon this information without seeking professional counsel.

TABLE OF CONTENTS

§37-60-126. Water conservation and drought mitigation 1

§38-33.3-106.5. Prohibitions contrary to public policy - patriotic and political expression - emergency vehicles - fire protection.
..... 1

 American Flag 1

 Service Flag 1

 Political Signs 1

 Emergency Vehicles 2

 Fire Mitigation 2

§38-33.3-123. Enforcement - limitation. 2

§38-33.3-124. Legislative declaration - alternative dispute resolution encouraged. 2

§38-33.3-209.4. Public Disclosure required 3

 At least annually 3

 90 days after year end 4

§38-33.3-209.5. Responsible governance policies. 4

 Accounting 4

 Policies 5

§38-33.3-209.6. Board member education 5

§38-33.3-209.7. Owner education. 5

§38-33.3-217. Amendment of declaration. 5

 Owner Consent 5

Mortgagee Consent	5
§38-33.3-221.5. Withdrawal from merged common interest community.	6
§38-33.3-223. Sale of unit - disclosure to buyer.	6
§38-33.3-301. Organization of unit owners' association.	6
§38-33.3-302. Powers of unit owners' association.	6
Managers	6
Architectural Control	6
Management Contract	6
§38-33.3-303. Board members and officers - powers and duties - audit	7
Audit	7
Review	7
Copies	7
§38-33.3-304. Meetings.	7
Notice	7
Email	7
Board meetings	7
Attorney - Client Privilege	8
§38-33.3-310. Voting - proxies.	8
Voting	8
Proxies	8
Validity	8
§38-33.3-310.5. Board - conflicts of interest.	8

§38-33.3-315. Assessments for common expenses.	9
§38-33.3-317. Association records.	9
List of owners	9
Permanent records	9
Available in office	10
Costs of copying	10
§38-35.7-102. Disclosure - common interest community - requirement for architectural approval	10
§10-4-110.8. Homeowner's insurance	10

Section Number Title	Common Interest Communities Affected	Effective Date	What's New
§37-60-126. Water conservation and drought mitigation	All subject to CCIOA	6/6/2005	May not prohibit or limit xeriscaping or require landscaping to be exclusively or primarily turf grass. May enforce covenants against owner who allows existing landscaping to die; however, enforcement must be suspended during period of water restrictions.
§38-33.3-106.5. Prohibitions contrary to public policy - patriotic and political expression - emergency vehicles - fire protection.	All subject to CCIOA	6/6/2005	American Flag - May not prohibit display of the American Flag on owner's property, in an owner's window or on adjoining balcony if displayed in a manner consistent with the Federal Flag Code. May adopt reasonable rules regarding placement and manner of display of the flag, and regulate location and size of flags and flagpoles.
			Service Flag - May not prohibit display on the inside of a window or door of a service flag bearing a star denoting service of owner or member of owner's immediate family in active or reserve military service of the U.S. during a time of war or armed conflict.
			Political Signs - May not prohibit display of political signs on owner's property or in owner's window. May regulate size, number and time of display but no more restrictively than applicable ordinances, if any.

Section Number Title	Common Interest Communities Affected	Effective Date	What's New
			Emergency Vehicles - May not prohibit parking of emergency vehicle bearing an official emblem and weighing less than 10,000 lbs on the association's streets, the owner's driveway or the association's guest parking spaces if the vehicle is required as a condition of the unit owner's employment by a volunteer fire department or emergency service provider, and does not obstruct or interfere with use of streets and driveways by other owners.
			Fire Mitigation - May not prohibit removal of trees, shrubs, or other vegetation to create a defensible space around a dwelling if it is pursuant to a written plan created for the property by qualified persons and filed with the association before commencement of the work. May not prohibit replacement of cedar shakes or other flammable roofing materials with nonflammable roofing materials.
§38-33.3-123. Enforcement - limitation.	All subject to CCIOA	1/1/2006	Confuses owners' obligation to pay the association's attorneys fees for covenant enforcement without the necessity of filing a legal proceeding. This will most likely be litigated or cleaned up in the next legislative session to find its meaning.
§38-33.3-124. Legislative declaration - alternative dispute resolution encouraged.	All subject to CCIOA	1/1/2006	May adopt a rule specifying situations in which disputes shall be resolved by binding arbitration under the "Uniform Arbitration Act."

Section Number Title	Common Interest Communities Affected	Effective Date	What's New
§38-33.3-209.4. Public Disclosure required	All subject to CCIOA except time-share	1/1/2006	<p>At least annually - Must provide at least annually in written form which may be done on web page with the web page address provided by email or first class mail, maintenance of a literature table or binder at the association's office or mail or personal delivery:</p> <p>Name of association Name of association's agent or management company, if any Valid physical addresses and telephone numbers for association and agent or management company, if any Name of the common interest community Initial date of recording of the Declaration Reception number or book and page for the main document that is the Declaration</p>

Section Number Title	Common Interest Communities Affected	Effective Date	What's New
			<p>90 days after year end - Must provide within ninety days after end of fiscal year in written form which may be done on web page with the web page address provided by email or first class mail, maintenance of a literature table or binder at the association's office or mail or personal delivery:</p> <p>Date on which fiscal year begins Operating budget for current fiscal year List, by unit type, of current regular and special assessments Annual financial statements, including amounts in reserve Results of any financial audit or review for previous fiscal year List of all association insurance policies including names, policy limits, policy deductibles, additional named insureds, and expiration dates Bylaws, Articles of Incorporation, and Rules and Regulations Minutes of Board and Member meetings for the previous fiscal year Association's policies adopted pursuant to §38-33.3-209.5</p>
			<p>Must provide notice of change in association's address, agent or management company changes within ninety days after the change.</p>
			<p>Must account for costs of disclosure as a common expense liability.</p>
<p>§38-33.3-209.5. Responsible governance policies.</p>	<p>All subject to CCIOA</p>	<p>1/1/2006</p>	<p>Accounting - Must maintain accounting records using generally accepted accounting principles.</p>

Section Number Title	Common Interest Communities Affected	Effective Date	What's New
			<p>Policies - Must adopt policies, procedures, and rules and regulations concerning:</p> <ul style="list-style-type: none"> Collection of unpaid assessments Handling conflicts of interest involving board members Conduct of meetings Enforcement of covenants and rules, including schedule of fines Inspection and copying of association records by owners Investment of reserve funds Procedures for adoption and amendment of policies, procedures, and rules
§38-33.3-209.6. Board member education	All subject to CCIOA	1/1/2006	Allows board members to be reimbursed as a common expense for attending educational meetings and seminars on responsible governance of associations specific to Colorado.
§38-33.3-209.7. Owner education.	All subject to CCIOA except time-share	1/1/2006	Must provide on an annual basis education to owners, at no cost to the individual owners, regarding general operations of the association and the rights and responsibilities of owners, the association, and the board under Colorado law.
§38-33.3-217. Amendment of declaration.	All subject to CCIOA	6/6/2005	<p>Owner Consent - Changes declaration provisions that have owner consent requirement of greater than 67% for amendment of a declaration to 67% except when petitioning a court for an order to declare declaration amendment valid.</p> <p>Mortgagee Consent - Provides procedure to accomplish mortgagee consent if required by current declaration.</p>

Section Number Title	Common Interest Communities Affected	Effective Date	What's New
§38-33.3-221.5. Withdrawal from merged common interest community.	All subject to CCIOA	1/1/2006	Provides procedure to "undo" mergers and consolidations.
§38-33.3-223. Sale of unit - disclosure to buyer.	All subject to CCIOA except time- share	1/1/2006	Must use best efforts to accommodate request by seller for documents needed for buyer's disclosure and which are within the association's control.
§38-33.3-301. Organization of unit owners' association.	All subject to CCIOA	1/1/2006	Clarifies rights under CCIOA are the same regardless of whether association is incorporated as a nonprofit, not-for-profit, for-profit corporation, or a limited liability company.
§38-33.3-302. Powers of unit owners' association.	All subject to CCIOA except time- share	1/1/2006	Managers - Subjects managing agents, employees, independent contractors, or other persons acting on behalf of the association to the same obligations that associations have under CCIOA.
			Architectural Control - Must make approval or denial decisions in compliance with standards and procedures contained in the declaration, properly adopted rules and regulations, or bylaws.
			Management Contract - Is terminable for cause without penalty. (This is sure to be litigated!)

Section Number Title	Common Interest Communities Affected	Effective Date	What's New
§38-33.3-303. Board members and officers - powers and duties - audit	All subject to CCIOA except time-share	1/1/2006	Audit - Must have performed once every two years if the association has annual revenues or expenditures of at least \$250,000.00 and is requested by owners of at least one-third of all units. Must be performed by a C.P.A.
			Review - May be performed instead of an audit once every two years if annual revenues or expenditures are less than \$250,000.00. Does not have to be performed by a C.P.A.
			Copies - Copies of audit or review must be made available upon request no later than 30 days' after completion.
§38-33.3-304. Meetings.	All subject to CCIOA except time-share	1/1/2006	Notice - Must post notice of members meetings in a conspicuous place to the extent feasible and practicable.
			Email - If electronic means are available (and when aren't they?), must provide all notices of all regular and special members meetings to owners who request it and provide email addresses.
			Board meetings - Must allow owners or their representatives, as designated by an owner in writing, to speak before the board takes formal action on an item under discussion. This does not include a right to participate in the discussion.

Section Number Title	Common Interest Communities Affected	Effective Date	What's New
			Attorney - Client Privilege - Allows board to preserve attorney-client privilege upon final resolution of any matter for which the board received legal advice or that concerned pending or threatened litigation.
§38-33.3-310. Voting - proxies.	All subject to CCIOA except time-share	1/1/2006	Voting - A vote taken for election of board members must be taken by secret ballot. By request of one or more owners, member votes on other matters shall also be by secret ballot.
	All subject to CCIOA		Proxies - Not valid if obtained through fraud or misrepresentation. May restrict appointment of proxies by rules, bylaws, or declaration provisions.
			Validity - Entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if the secretary, other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the owner. Not liable in damages for consequences of acceptance or rejection. Rejection or acceptance is valid unless a court of competent jurisdiction determines otherwise.
§38-33.3-310.5. Board - conflicts of interest.	All subject to CCIOA except time-share	1/1/2006	 voids contracts entered into in violation of proper procedure to handle board member conflicts of interest for financial benefit. Prohibits board member with conflict of interest to vote on the issue in which a conflict of interest exists.

Section Number Title	Common Interest Communities Affected	Effective Date	What's New
§38-33.3-315. Assessments for common expenses.	All subject to CCIOA	1/1/2006	Authorizes associations to enter into escrow agreements with mortgage holders so that assessments may be combined with the owners' mortgage payments and paid at the same time in the same manner.
§38-33.3-317. Association records.	All subject to CCIOA except time- share	1/1/2006	List of owners - Must maintain a record of unit owners in a form that permits preparation of a list of names and addresses of all owners, showing number of votes each owner is entitled to vote.
	All subject to CCIOA		Permanent records - Must keep: Minutes of all meetings of owners and the board Record of all actions taken by owners or the board by written ballot or written consent without a meeting Record of all actions taken by a committee of the board in place of the board on behalf of the association Record of all waivers of notices of meetings of members, the board, or a committee of the board

Section Number Title	Common Interest Communities Affected	Effective Date	What's New
			<p>Available in office - Shall keep a copy of each of the following in the association's office:</p> <p>Declaration, Articles of Incorporation, Bylaws, Rules and Regulations, Resolutions</p> <p>Minutes of members meetings and record of all actions taken by members without a meeting, for the past three years</p> <p>Written communications to owners generally as owners, for the past three years</p> <p>List of names and business or home addresses for current board members</p> <p>Most recent annual report, if any</p> <p>Financial audits and reviews, for the past three years</p>
			<p>Costs of copying - May charge a fee but it cannot be more than the association's actual cost of copying.</p>
<p>§38-35.7-102. Disclosure - common interest community - requirement for architectural approval</p>	<p>All subject to CCIOA except time-share</p>	<p>1/1/2006</p>	<p>Requires specific disclosure statement by sellers to buyers.</p>
<p>§10-4-110.8. Homeowner's insurance</p>	<p>All subject to CCIOA</p>	<p>1/1/2006</p>	<p>Owner may file a claim against the association's policy to the same extent and with the same effect as if the owner were an additional named insured.</p>