



Real Estate Commission



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Colorado Real Estate Manual - Chapter 4

COLORADO COMMON INTEREST OWNERSHIP ACT

38-33.3-101. Short title. This article shall be known and may be cited as the "Colorado Common Interest Ownership Act".

38-33.3-102. Legislative declaration.

(1) The general assembly hereby finds, determines, and declares, as follows:

(a) That it is in the best interests of the state and its citizens to establish a clear, comprehensive, and uniform framework for the creation and operation of common interest communities;

(b) That the continuation of the economic prosperity of Colorado is dependent upon the strengthening of homeowner associations in common interest communities financially through the setting of budget guidelines, the creation of statutory assessment liens, the granting of six months' lien priority, the facilitation of borrowing, and more certain powers in the association to sue on behalf of the owners and through enhancing the financial stability of associations by increasing the association's powers to collect

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delinquent assessments, late charges, fines, and enforcement costs;

(c) That it is the policy of this state to give developers flexible development rights with specific obligations within a uniform structure of development of a common interest community that extends through the transition to owner control;

(d) That it is the policy of this state to promote effective and efficient property management through defined operational requirements that preserve flexibility for such homeowner associations;

(e) That it is the policy of this state to promote the availability of funds for financing the development of such homeowner associations by enabling lenders to extend the financial services to a greater market on a safer, more predictable basis because of standardized practices and prudent insurance and risk management obligations.

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:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person: is a general partner, officer, director, or employee of the declarant; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests of the declarant; controls in any manner the election of a majority of the directors of the declarant, or has contributed more than twenty percent of the capital of the declarant. A person is controlled by a declarant if the declarant: is a general partner, officer, director, or employee of the person; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests of the person; controls in any manner the election of a majority of the directors of the person; or has contributed more than twenty percent of the

capital of the person. Control does not exist if the powers described in this subsection (1) are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the following interests allocated to each unit:

(a) In a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association;

(b) In a cooperative, the common expense liability and the ownership interest and votes in the association; and

(c) In a planned community, the common expense liability and votes in the association.

(2.5) "Approved for Development" means that all or some portion of a particular parcel of real property is zoned or otherwise approved for construction of residential and other improvements and authorized for specified densities by the local land use authority having jurisdiction over such real property and includes any conceptual or final planned unit development approval.

(3) "Association" or "unit owners' association" means a unit owners' association organized under section 38-33.3-301.

(4) "Bylaws" means any instruments, however denominated, which are adopted by the association for the regulation and management of the association, including any amendments to those instruments.

(5) "Common elements" means:

(a) In a condominium or cooperative, all portions of the condominium or cooperative other than the units; and

(b) In a planned community, any real estate within a planned community owned or leased by the association, other than a unit.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 38-33.3-207.

(7) "Common expenses" means expenditures made or liabilities incurred by or on behalf of the association, together with any allocations to reserves.

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

(9) "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(10) "Cooperative" means a common interest community in which the real property is owned by an association, each member of which is entitled by virtue of such member's ownership interest in the association to exclusive possession of a unit.

(11) "Dealer" means a person in the business of selling units for such person's own account.

(12) "Declarant" means any person or group of persons acting in concert who:

(a) As part of a common promotional plan, offers to dispose of to a purchaser such declarant's interest in a unit not previously disposed of to a purchaser; or

(b) Reserves or succeeds to any special declarant right.

(13) "Declaration" means any recorded instruments however denominated, that create a common interest community, including any amendments to those instruments and also including, but not limited to, plats and maps.

(14) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to:

(a) Add real estate to a common interest community;

(b) Create units, common elements, or limited common elements within a

common interest community;

(c) Subdivide units or convert units into common elements; or

(d) Withdraw real estate from a common interest community.

(15) "Dispose" or "disposition" means a voluntary transfer of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.

(16) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

(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.

(17) "Identifying number" means a symbol or address that identifies only one unit in a common interest community.

(17.5) "Large planned community" means a planned community that meets the criteria set forth in section 38-33.3-116.3 (1).

(18) "Leasehold common interest community" means a common interest community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the common interest community or reduce its size.

(19) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of section 38-33.3-202 (1) (b) or (1) (d) for the exclusive use of one or more units but fewer than all of the units.

(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.

(20) "Master association" means an organization that

is authorized to exercise some or all of the powers of one or more associations on behalf of one or more common interest communities or for the benefit of the unit owners of one or more common interest communities.

(21) "Person" means a natural persons a corporation, a partnership, an association, a trust or any other entity or any combination thereof.

(22) "Planned community" means a common interest community that is not a condominium or cooperative. A condominium or cooperative may be part of a planned community.

(22.5) "Plat" means that part of a declaration that is a land survey plat as set forth in section 38-51-105 6 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.

(23) "Proprietary lease" means an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative.

(24) "Purchaser" means a person, other than a declarant or a dealers who by means of a transfer acquires a legal or equitable interest in a unit, other than:

(a) A leasehold interest in a unit of less than forty years, including renewal options, with the period of the leasehold interests including renewal options, being measured from the date the initial term commences; or

(b) A security interest.

(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 customs usage, or laws 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 horizontal boundaries and spaces that may be filled with air or water.

(26) "Residential use" means use for dwelling or recreational purposes but does not include spaces or units primarily used for commercial income from, or

service to, the public.

(27) "Rules and regulations" means any instruments, however denominated, which are adopted by the association for the regulation and management of the common interest community, including any amendment to those instruments.

(28) "Security interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to perform the following acts as specified in parts 2 and 3 of this article: To complete improvements indicated on plats and maps filed with the declaration; to exercise any development right; to maintain sales offices, management offices, signs advertising the common interest community, and models; to use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community; to make the common interest community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the association or any executive board member during any period of declarant control.

(30) "Unit" means a physical portion of the common interest community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the declaration. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

(31) "Unit owner" means the declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease, the expiration or termination of which will remove the unit from the common interest community but does not include a

person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration until that unit is conveyed to another person, in a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated pursuant to section 38-33.3-207 until that unit has been conveyed to another person, who may or may not be a declarant under this article.

(32) "Vertical boundary" means the defined limit of a unit that is not a horizontal boundary of that unit.

38-33.3-104. Variation by agreement.

Except as expressly provided in this article, provisions of this article may not be varied by agreement, and rights conferred by this article may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this article or the declaration.

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.

(3) In a planned community without common elements, the real estate comprising such planned community may be taxed and assessed in any manner provided by law.

38-33.3-106. Applicability of local ordinances, regulations, and building codes.

(1) A building code may not impose any requirement

upon any structure in a common interest community which it would not impose upon a physically identical development under a different form of ownership; except that a minimum one hour fire wall may be required between units.

(2) In condominiums and cooperatives, no zoning, subdivision, or other real estate use law, ordinance, or regulation may prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative which it would not impose upon a physically identical development under a different form of ownership.

38-33.3-107. Eminent domain.

(1) If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking. Any remnant of a unit remaining after part of a unit is taken under this subsection (1) is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit or on any other basis specified in the declaration; and

(b) The portion of allocated interests divested from the partially acquired unit is automatically reallocated to that unit and to the remaining units in proportion to the respective interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by eminent domain, that portion of any award attributable to the common elements taken must be paid to the

association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition. For the purposes of acquisition of a part of the common elements other than the limited common elements under this subsection (3), service of process on the association shall constitute sufficient notice to all unit owners, and service of process on each individual unit owner shall not be necessary.

(4) The court decree shall be recorded in every county in which any portion of the common interest community is located.

(5) The reallocations of allocated interests pursuant to this section shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

38-33.3-108. Supplemental general principles of law applicable.

The principles of law and equity, including, but not limited to, the law of corporations and un-incorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this article, except to the extent inconsistent with this article.

38-33.3-109. Construction against implicit repeal.

This article is intended to be a unified coverage of its subject matter, and no part of this article shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

38-33.3-110. Uniformity of application and construction.

This article shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

38-33.3-111. Severability.

If any provision of this article or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provisions or application, and, to this end, the provisions of this article are severable.

38-33.3-112. Unconscionable agreement or term of contract.

(1) The court, upon finding as a matter of law that a

contract or contract clause relating to a common interest community was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(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:

(a) The commercial setting of the negotiations;

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

(c) The effect and purpose of the contract or clause; and

(d) If a sale, any gross disparity at the time of contracting between the amount charged for the property and the value of that property measured by the price at which similar property was readily obtainable in similar transactions. A disparity between the contract price and the value of the property measured by the price at which similar property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

38-33.3-113. Obligation of good faith.

Every contract or duty governed by this article imposes an obligation of good faith in its performance or enforcement.

38-33.3-114. Remedies to be liberally administered.

(1) The remedies provided by this article shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this article or by other rule of law.

(2) Any right or obligation declared by this article is enforceable by judicial proceeding.

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.

38-33.3-116. Exception for new small cooperatives and small and limited expense planned communities.

(1) If a cooperative created in this state on or after July 1, 1992, but prior to July 1, 1998, 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 38-33.3-105, 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, but prior to July 1, 1998, 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.

(2) If a cooperative or planned community created in this state on or after July 1, 1998, contains only units restricted to nonresidential use, or contains no more than twenty units and is not subject to any development rights, 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. If a planned community created in this state after July 1, 1998, 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 four hundred dollars, as adjusted pursuant to subsection (3) of this section, 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.

(3) The four-hundred-dollar limitation set forth in subsection (2) of this section shall be increased annually on July 1, 1999, and on July 1 of each

succeeding year in accordance with any increase in the United States Department of Labor, Bureau of Labor Statistics Final Consumer Price Index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year. The limitation shall not be increased if the final consumer price index for the preceding calendar year did not increase and shall not be decreased if the final consumer price index for the preceding calendar year decreased.

38-33.3-116.3. Large planned communities - exemption from certain requirements.

(1) A planned community shall be exempt from the provisions of this article as specified in subsection (3) of this section or as specifically exempted in any other provision of this article, if, at the time of recording the affidavit required pursuant to subsection (2) of this section, the real estate upon which the planned community is created meets both of the following requirements:

(a) It consists of at least two hundred acres;

(b) It is approved for development of at least five hundred residential units, excluding any interval estates, time-share estates, or time-span estates but including any interval units created pursuant to sections 38-33-110 and 38-33-111, and at least twenty thousand square feet of commercial use.

(c) deleted by amendment effective 7-1-95

(d) 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; and

(e) 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 or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(5) (a) The exemption authorized by this section shall continue for the large planned community so long as the owner signing the affidavit is the owner of the real estate described in subsection (2) of this section; except that:

(I) Upon the sale, conveyance, or other transfer of any portion of the real estate within the large planned community, the portion sold, conveyed, or transferred shall become subject to all the provisions of this article;

(II) Any common interest community created on some but not all of the real estate within the large planned community shall be created pursuant to this article; and

(III) When a planned community no longer qualifies as a large planned community, as described in subsection (1) of this section, the exemptions authorized by this section shall no longer be applicable.

(b) Notwithstanding the provisions of subparagraph (III) of paragraph (a) of this subsection (5), all real estate described in a recorded declaration creating a large planned community shall remain subject to such recorded declaration.

(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 owner's association with respect to any unit.

(7) The association established for a large planned community shall keep in its principal office and make reasonably available to all unit owners, unit owners' authorized agents, and prospective purchasers of units a complete legal description of all common elements within the large planned community.

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:

(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.-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 provisions of any declaration, bylaws, plat or 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.

(4) Section 38-33.3-308 (2) to (7) shall apply to all common interest communities created within this state before July 1, 1995, and shall apply to all meetings of the executive board of such a community or any committee thereof occurring on or after said date. In addition, said section 38-33.3-308 (2) to (7) shall apply to all common interest communities created on or after July 1, 1995, and shall apply to all meetings of the executive board of such a community or any committee thereof occurring on or after said date.

38-33.3-118. Procedure to elect treatment under the "Colorado common interest ownership act".

(1) Any 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 sixty-seven percent of the votes that the persons present at such meeting in person or by proxy are entitled to cast.

(b) If there are no persons entitled to vote thereon, the election to be treated as a common interest community under this article may be made at a meeting of the board of directors pursuant to a majority vote of the directors in office.

(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:

(a) The name of the common interest community and association;

(b) That the association has elected to accept the provisions of this article;

(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 sixty-seven percent of the votes that the members or stockholders present at such meeting in person or by proxy were entitled to cast;

(d) That there were no members or stockholders entitled to vote thereon, the date of the meeting of the board of directors at which election to accept this article was made, that a quorum was present at the meeting, and that such acceptance was authorized by a majority vote of the directors present at such meeting;

(e) (deleted by amendment effective 4-30-93)

(f) The names and respective addresses of its officers and directors; and

(g) If there were no persons entitled to vote thereon but a common interest community has been created by virtue of compliance with section 38-33.3-103 (8), that the declarant desires for the common interest community to be subject to all the terms and provisions of this article.

(3) The original statement of election to be treated as

a common interest community subject to the terms and conditions of this article shall be duly recorded in the office of the clerk and recorder for the county in which the common interest community is located.

(4) Upon the recording of the original statement of election to be treated as a common interest community subject to the provisions of this article, said common interest community shall be subject to all provisions of this article. Upon recording of the statement of election, such common interest community shall have the same powers and privileges and be subject to the same duties, restrictions, penalties, and liabilities as though it had been created after June 30, 1992.

(5) Notwithstanding any other provision of this section, and with respect to a common interest community making the election permitted by this section, this article shall apply only with respect to events and circumstances occurring on or after July 1, 1992, and does not invalidate provisions of any declaration, bylaws, or plats or maps in existence on June 30, 1991.

38-33.3-119. Exception for small preexisting cooperatives and planned communities.

If a cooperative or planned community created within this state before July 1, 1992, contains no more than ten units and is not subject to any development rights, it is subject only to sections 38-33.3-105, 38-33.3-106, and 38-33.3-107 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of section 38-33.3-120, in which case all the sections enumerated in section 38-33.3-117 apply to that planned community.

38-33.3-120. Amendments to preexisting governing instruments.

(1) In the case of amendments to the declaration, bylaws, or plats and maps of any common interest community created within this state before July 1, 1992, which has not elected treatment under this article pursuant to section 38-33.3-118:

(a) If the substantive result accomplished by the amendment was permitted by law in effect prior to July 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this article; and

(b) If the substantive result

accomplished by the amendment is permitted by this article, and was not permitted by law in effect prior to July 1, 1992, the amendment may be made under this article.

(2) An amendment to the declaration, bylaws, or plats and maps authorized by this section to be made under this article must be adopted in conformity with the procedures and requirements of the law that applied to the common interest community at the time it was created and with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers, or privileges permitted by this article, all correlative obligations, liabilities, and restrictions in this article also apply to that person.

38-33.3-120.5 Extension of declaration term.

(1) If a common interest community has a declaration in effect with a limited term of years that was recorded prior to July 1, 1992, and if, before the term of the declaration expires, the unit owners in the common interest community have not amended the declaration pursuant to section 38-33.3-120 and in accordance with any conditions or fixed limitations described in the declaration, the declaration may be extended as provided in this section.

(2) The term of the declaration may be extended:

(a) If the executive board adopts a resolution recommending that the declaration be extended for a specific term not to exceed twenty years and directs that the question of extending the term of the declaration be submitted to the unit owners, as members of the association; and

(b) If an extension of the term of the declaration is approved 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.

(3) Except for the extension of the term of a declaration as authorized by this section, no other provision of a declaration may be amended pursuant to the provisions of this section.

(4) For any meeting of unit owners at which a vote is to be taken on a proposed extension of the term of a declaration as provided in this section, the secretary

or other officer specified in the bylaws shall provide written notice to each unit owner entitled to vote at the meeting stating that the purpose, or one of the purposes, of the meeting is to consider extending the term of the declaration. The notice shall be given in the time and manner specified in section 38-33.3-308 or in the articles of incorporation, declaration, bylaws, or other governing documents of the association.

(5) The extension of the declaration, if approved, shall be included in an amendment to the declaration and shall be executed, acknowledged, and recorded by the association in the records of the clerk and recorder of each county in which any portion of the common interest community is located. The amendment shall include:

(a) A statement of the name of the common interest community and the association;

(b) A statement that the association has elected to extend the term of the declaration pursuant to this section and the term of the approved extension;

(c) A statement that indicates that the executive board has adopted a resolution recommending that the declaration be extended for a specific term not to exceed twenty years, that sets forth the date of the meeting at which the unit owners elected to extend the term of the declaration, and that declares that the extension was authorized by a 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;

(d) A statement of the names and respective addresses of the officers and executive board members of the association.

(6) Upon the recording of the amendment required by subsection (5) of this section, and subject to the provisions of this section, a common interest community is subject to all provisions of the declaration, as amended.

38-33.3-121. Applicability to nonresidential planned communities.

This article does not apply to a planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the article does apply to that planned