ken elliott

From: "Mark Payne" <MPayne@wlpplaw.com>
To: "ken elliott" <ellandco@comcast.net>
Sent: Wednesday, April 26, 2006 7:48 PM
Attach: image001.jpg
Subject: RE: HOA Compliance SB-100

Hello Ken:

I am writing following our conversation today concerning the Association's compliance with SB 100. As we've discussed, SB 100, the amendment to CCIOA and other statutes relevant to community associations in Colorado, requires that an association have, at a minimum, seven listed policies in effect as of January 1, 2006. These policies must address the following topics:

1. The collection of unpaid assessments;

2. The handling of conflicts of interest involving board members;

3. The method of conducting meetings;

4. The enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines;

5. The inspection and copying of association records by unit owners;

6. The investment of reserve funds; and

7. The procedures for the adoption and amendment of policies, procedures and rules.

We offer to prepare all seven mandatory policies for a fixed fee of $1,000.00. This will include a review of the association's governing documents to assure compliance of these policies with the provisions of the association's governing documents. In addition, at this point, there is pending legislation being considered by the legislature that will amend SB 100, and which will require adoption of an additional policy requiring that the Association set out how it handles dispute resolution. If this new legislation becomes law, we would provide this additional policy for an additional $250.00.

The above fees provide our recommended standard form policies that are consistent with the association's governing documents, and includes minor revisions after the policies are reviewed by the Board. Should the Board desire to customize the policies beyond the levels offered above, that service will be provided at our regular hourly rates. Our pricing structure does not include time for explaining deficiencies in the association's current policies or explaining the rationale behind the policies prepared by our office. We believe that the structure set forth above provides the best balance of recognizing the association's uniqueness with providing needed documents at a reasonable fee.

S.B. 100 does not require that you take any other action to amend your association's governing documents, although it (along with the provisions of CCIOA that apply to your association) do impose a number of additional requirements that you must comply with.

As we discussed, you can find a copy of SB 100 and our discussion of it (including a fairly comprehensive summary, as well as a copy of CCIOA) on our web site, at www.cohoalaw.com. In addition, we also have a fair amount of recent discussion about the proposed new legislation, which is currently known as SB06-89.

Finally, as a follow up to our meeting last week, I've checked the Colorado Secretary of State's web site, and can find no record of the Surrey Ridge Association, not even suspended or dissolved, which means that it was probably dissolved long enough ago that all records have been expunged. This means that the Association will need to re-incorporate. Jeff seemed to have a pretty good handle on how to go about bringing it back into good standing, but re-incorporating is a little different. Let me know if you have any questions about this as well.

If you have any questions, please do not hesitate to contact me to discuss this matter further.

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From: ken elliott [mailto:ellandco@comcast.net]
Sent: Wednesday, April 26, 2006 6:44 AM
To: Mark Payne
Subject: HOA Compliance SB-100

Mark,

We are in the process of approving the hiring of your firm to bring the HOA into compliance with SB-100. I do, however, need some information to submit to the Board along with our recomendation.

1. Copy of SB-100.

2. Summary of SB-100
3. Exactly what your firm will do to make us compliance.
4. Cost

Thank you!

Ken Elliott

K.E. Elliott
Elliott & Co
9159 North Clydesdale Road
Castle Rock, CO 80108
(303) 799-8058
(303) 708-9838

MEMORANDUM

TO: **SURREY RIDGE HOA BOARD OF DIRECTORS**

FROM: **K.E. ELLIOTT,**

SUBJECT: HOA COMPLIANCE TO SB-100

DATE: April 28, 2006

A meeting was held with Mr. Mark Payne of Winzenburg, Leff, Purvis & Payne, on Thursday, April 20, 2006 to discuss the issue of compliance to Senate Bill 100 for the Surrey Ridge HOA.

In attendance were Kristi Brindle, Jeff Brothers, Teena Gonzales, Janis Yamada, Jim Wunderlich and Ken Elliott.

Enclosed is a proposal from Mr. Payne to bring the Surrey Ridge HOA into compliance for SB-100 and a copy of the Bill for your review.

Kristi Brindle, Jeff Brothers and Ken Elliott agreed that we should hire Mark Payne to bring us into compliance. The Board members that were not in attendance should email their agreement or disagreement to me at your earliest convenience

---

During the meeting the topic of the Surrey Ridge Covenants and the enforcement of the covenants was discussed and all opinions were expressed. Enclosed are comments from Kristi Brindle, Jeff Brothers and Janis Yamada.

As members of the Surrey Ridge Board of Directors the By-Laws state that we are to "promote and protect the interests of the property owners" of Surrey Ridge and this obligation was based on the Covenants that were adopted prior to the development of the subdivision. The covenants were adopted to promote a way of life.

The Surrey Ridge Covenants "run with the land" and are as much a part of the community as the trees and improvements.

We need to focus our efforts in this community in maintaining what we all moved here for and not to create a "range war" similar to what occurred about 8 years ago when a group tried to change the Covenants.

The Board of Directors has enough work on the table to complete before we start creating more problems that we cannot possibly resolve.

Let's try creating a sense of community instead of one of diversity.

ken elliott

From: "Kristine Brindle" <khbrindle@castlepines.net>
To: "ken elliott" <ellandco@comcast.net>
Sent: Friday, April 21, 2006 2:41 PM
Subject: RE: Meeting with Mark Payne

Here are my thoughts:

- It is our responsibility as a board to abide by state law. Not coming into compliance would be incompetence.
- I thought that $1000 fee from Mr. Payne for the necessary startup documents is very fair. I do not want to get into the situation of making "homemade" compliance documents. I will not accept that. We need creditability.
- I do not understand the need to take a poll of the neighborhood to see how the wind blows. The board should do what is right, not what is popular.
- There may be some need for subtlety here to not be too heavy handed on the enforcement item. The main point is that we are required by statute to upgrade the HOA organization. What more needs to be said?
  [Kristine Brindle]

-----Original Message-----
From: ken elliott [mailto:ellandco@comcast.net]
Sent: Friday, April 21, 2006 4:10 AM
To: kristi brindle; jeff brothers; janis yamada; jim wunderlich; teena gonzales
Subject: Meeting with Mark Payne

Thank you all for your time last night, your comments and lively discussion.

At your convenience please send me your comments and thoughts regarding HOA compliance and Mark Payne so we may share them with the Board of Directors.

I will try to get a copy of the regulations so we can all review them further.

KE

K.E. Elliott
Elliott & Co
9159 North Clydesdale Road
Castle Rock, CO 80108
(303) 799-8058
(303) 708-9838

ken elliott

From: "Jeff Brothers" <jeffreybrothers@comcast.net>
To: "'ken elliott'" <ellandco@comcast.net>; "'kristi brindle'" <khbrindle@castlepines.net>; "'janis yamada'" <shoppestar@aol.com>; "'jim wunderlich'" <jimwunder@aol.com>; "'teena gonzales'" <driskillteena@yahoo.com>
Cc: <mpayne@wlpplaw.com>
Sent: Saturday, April 22, 2006 4:52 PM
Subject: RE: Meeting with Mark Payne

Ken:

I know it's important to carefully articulate exactly what it is we are trying to accomplish so it may take me a few iterations to do that. Pleae bear with me through this process and I hope all of us can participate in a way that expresses not just WHAT it is we are trying to do but HOW we intend to get there. I think we all agree that there are varying degrees of covenant enforcement we want to have and that there is a broad constituency here in Surrey Ridge. I believe consenus is the only way to bring about reform or a new direction to establishing "rules" in this community. There will have to be some give and take on all sides of the question.

Having said that, I believe from Mark's presentation that it is essential that we adopt the SB-100 criteria to governing the association. This has nothing to do with covenenat enforcement per se rather it deals with framing our community around those provisions. This is a strong incentive to send to our owners as a requirement under CO law. If we can keep this issue separate from the "covenant" issue we can gradually introduce the concept of active governance through the board. Once the homeowners believe there is an active board with structure and purpose it will positively influence the perception of the board and its role in the community.

We need to recognize (and I know I am preaching to the choir) that a number of homeowners moved here precisely because "rules" were not as prominent in the decision to purchase property. If this is not true then we need evidence to that effect. If there is a strong "rules-oriented" ownership either from the past or as a result of recent sales and trends, then we need to ferret that out. I guess I'm just saying we need to understand our constituency. The introduction of the SB-100 compliance issue may be an opportunity to do that. I would suggest that we put together either a poll/survey that asks specific questions of what people envision for Surrey Ridge in the way of covenant enforecement, areas of concern, whether they just want to be left alone or what that tells us what the members want. Based on that we can know how far to extend this concept of rules and governance. This is not a delaying tactic rather it is designed to once again, make people aware that this board means business.

Having said that, the rules around architectural control are almost another issue all together. We cannot ignore any longer the question of building sizes, colors, materials etc that are inherent in prudent community controls. Those elements are the most visible of the community's character and value. There are buildings out there now that potentially threaten our market position as a desirable community from a real estate standpoint. We must address this issue by proceeding with solid guidelines for ACC, support Jim and Karen actively as a board to regulate and control architectural requests and act when needed to limit undesirable building appearances. We can and should make our community and our county aware of our active position in regulating this issue.

This is a conceptual response to your question of the meeting the other night. We must act purposefully, fairly and with calm in bringing about change in the community. We must solicit owner input and respond to concerns and lastly I believe we should engage in a democratic process that is inclusive of as many people as possible. If we determine that the majority of folks are happy with the direction we have come from and wish to continue in then we need to factor that into our purpose as a board. However, if there is majority support for change away from our status quo, then we can be the agents of that change. I for one welcome the opportunity to do some positive things for the community, but I am not and will not be likely to support a direction that does not have the general support of our community.

As I mentioned at the outset, this will take some re-iteration to capture all of my thoughts as well as all of ours but I believe it's a good start. I look forward to wrestling these things through.

Thanks for your diligence and a lot of hard work that you've been doing since taking on your role.

ken elliott

From: <Shoppestar@aol.com>
To: <ellandco@comcast.net>; <khbrindle@castlepines.net>; <JimWunder@aol.com>; <driskillteena@yahoo.com>; <jeffreybrothers@comcast.net>
Cc: <mpayne@wlpplaw.com>
Sent: Saturday, April 22, 2006 6:19 PM
Subject: Re: Meeting with Mark Payne

Ken:

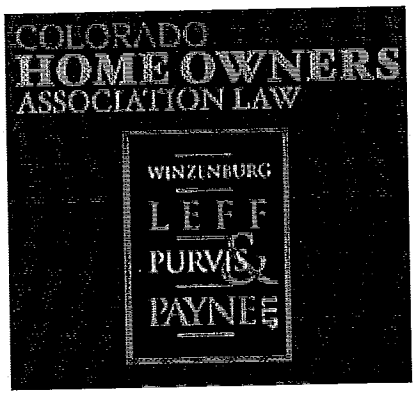
Since the meeting with Mark Payne, I have been pondering over the direction we need to take.

I agree with Kristi that it's our responsibility as a board to abide by state law. I also agree that we should not be making "home made" compliance documents. I believe, credibility is necessary. The $1000 start up fee is fair, in my opinion.

The board has the responsibility of informing the members of SRHOA that we are an ACTIVE group and that we all want to continue the original plans for this community. That we all need to follow some type of guidelines to maintain congruity in our neighborhood and to insure we don't compromise our property values.

Ken, I need more time to gather my thoughts...but I thought I'd share this much with you. I'm glad to be a part of this direction our board is taking.

Thanks for allowing me to share. Janis



06 | 13 | 2005 Posted By Mark K. Payne

S. B. 100 - What You Need to Know About Colorado's Newest Law Affecting Common Interest Communities

Introduction

Those of us involved in community associations in Colorado have been closely following the progress of SB 100, a bill introduced and sponsored by Senator Hagedorn and Representative Carroll. On June 6, 2005, Governor Owens signed the bill into law. There were more than 100 changes to the bill during its journey to becoming law. Below, we discuss the many provisions of the new law, and what they mean to community associations in Colorado. For the full text of the law as approved by Governor Owens, click here.

The law will change how most community associations do business, some to a greater extent, and some to a lesser extent. There are three substantive provisions that became effective upon the bill being signed – Section 1, Section 2 and Section 8. The remaining substantive provisions of the bill become effective on January 1, 2006. Many of the new provisions are uncertain as to their application, and only time, or court opinions, will help clarify them. We have provided our interpretation of their meaning, but, as with any attorney opinion, it is just that - an opinion. Ultimately, the determination of what the law means is up to the judge. Further, in many instances, we have only paraphrased the statute. Paraphrasing a statute can be dangerous, because every part of a statute is important in its interpretation. It is not our intent to provide specific legal opinions with respect to your association. Your governing documents, and specific facts, are always important in reaching any specific opinions.

Thank you for visiting us here. If you have questions about this significant piece of legislation, or about any other matter concerning your association, please feel free to contact us.

SECTION 1
37-60-126. Water conservation and drought mitigation planning – programs – relationship to state assistance for water facilities.

Summary. This Section updates C.R.S. 37-60-126, a statute which formerly restricted only new restrictive covenants relating to drought-tolerant vegetative landscapes. The new Act sharpens the teeth of this statute by making it applicable to all covenants, restrictions, bylaws, executive board policies or practices, or conditions applicable to real property, new or old. Further, the Act makes unenforceable

"[a]ny section of a restrictive covenant that prohibits or limits xeriscape, prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist exclusively or primarily of turf grass." The Act goes on to specifically define both turf grass and xeriscape.

While the Act allows the Executive Board to take action against a homeowner whose landscaping is dying, it cautions that such action must be suspended if the association's jurisdiction imposes water use restrictions and that the action must be consistent throughout the community. Subsequently, the association must allow a reasonable and practical opportunity for the owner to revive his or her turf grass before needing to replace it. The Association may define what is reasonable, but it must take into consideration "applicable local growing seasons or practical limitations."

These changes are effective June 6, 2005.

Comments and Association Action. Given the current season and climate, this is likely to be one of the first encounters your association will have with the new law. To fully understand its effect on your association, first review your governing documents to determine which, if any, of the provisions relating to landscaping are no longer enforceable under the new law. Second, create a written policy that will define what a "reasonable and practical opportunity" is for the owner to revive his or her turf grass and be sure to follow it in every situation that arises. Finally, your association may consider creating a new policy on yard maintenance that includes requirements for xeriscaping.

For more information about this section, contact Alli at agerkman@wlpplaw.com

SECTION 2
38-33.3-106.5. Prohibitions contrary to public policy – patriotic and political expression – emergency vehicles – fire prevention – definitions.

All of the changes set forth in Section 2 become effective June 6, 2005.

American Flags. Summary. Homeowner associations must allow the display of the American flag on a "unit owner's property, in a window of the unit owner's residence, or on a balcony adjoining the unit owner's property." The display of the flag must comply with the Federal Flag Code. Associations may adopt rules concerning the placement and manner of display of the flag and may regulate the size and location of flags and flagpoles. Associations may not prohibit the installation of flags or flagpoles.

Comments and Association Action: This provision re-codifies existing legislation [link to C.R.S. 27-2-108.5.] that established the right of property owners to display the American flag, subject to reasonable regulations. Within this provision, the scope of "unit owner's property" may prove ambiguous. Owners may assert that common elements and limited common elements constitute their property based on their ownership interest in the common elements. Associations should address this issue, as well as the manner of display of flags and general placement of flags and flagpoles, in rules and regulations concerning flags and flagpoles.

Service Member Flags. Summary. Associations must also permit homeowners to display service member flags that bear stars denoting the military service of a unit owner or occupant. Homeowners may only display service member flags on the inside of a window or door of the unit. Associations may adopt rules concerning the size and manner of display of the flags but may not limit the maximum allowable size of the flags to anything less than nine by sixteen inches.

Political Signs. Summary. The legislation defines political signs and requires associations to allow owners to display political signs on their property or in windows of their units. Associations may prohibit the display of political signs earlier than forty-five days prior to the election day and later than seven days after the election day. If the city, town, or county where the Association is located already regulates political signs, the Association may also regulate political signs but may not impose regulations that are more restrictive than the applicable city, town, or county ordinances. If the city, town, or county where the Association is located does not regulate political signs, then the Association must allow owners to display on their property at least one sign per contested political office or ballot issue in the pending election. The Association must also limit the dimensions of the signs to thirty-six by forty-eight inches.

Comments and Association Action: Associations should determine whether town, city, or county ordinances currently apply and, if so, use such ordinances as guidelines in crafting rules and regulations concerning political signs. Again, as in the American flag provision, the statute uses the language "unit owner's property." Although this provision of the statute does not expressly allow placement of political signs on balconies adjoining the unit owner's property, some owners may raise the issue of their ownership interest in the limited common elements and common elements in support of an argument for placing political signs on limited common element balconies. An association may avoid this conflict by devising rules and regulations that define "unit owner's property" within the community.

Emergency Vehicles. Summary. Associations must permit an owner to park an emergency vehicle in the association streets, driveways, or guest parking areas if the all of the following criteria are met:

(1) the vehicle is required to be available at designated times at the owner's residence as a condition of the owner's employment;
(2) the vehicle has a gross vehicle weight rating of ten thousand pounds or less;
(3) the owner is a bona fide member of a volunteer fire department or is employed by an emergency service provider [link to C.R.S. 29-11-101(1.6)];
(4) the vehicle bears an official emblem or other visible designation of the emergency service provider; and
(5) the owner can park the vehicle "without obstructing emergency access or interfering with the reasonable needs of other unit owners to use streets and driveways" within the community.

Comments and Association Action: Associations should adopt rules and regulations concerning emergency vehicle parking. Those rules and regulations may require owner registration of the vehicle, verification of the employment or volunteer status of the owner, and documentation of the vehicle's size rating. The Association may also designate certain areas for parking emergency vehicles so as to avoid interfering with other residents' needs.

Fire Mitigation. Summary. This provision requires the Association to allow owners to comply with a written defensible space plan if that plan was created for the property by the Colorado State Forest Service, an individual or company certified by a local governmental entity to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the property is located. Owners in compliance with such a plan may remove trees, shrubs, or other vegetation without recourse as long as they first register the plan with the association and do not remove more vegetation than necessary to comply with the plan. Associations may require revisions to the plan if they receive consent from the individual or entity that originally created it. Owners must complete the work in compliance with association standards for slash removal, stump height, revegetation, and contractor regulations.

Comments and Association Action: For mountain communities faced with fire mitigation and the creation of defensible spaces surrounding homes, this portion of the new legislation may sound familiar.

This new piece of legislation allows individual owners to hire a contractor for the purpose of developing a fire mitigation plan. These owners can then register the plans with the association and proceed with the plans' requirements. An association may desire to create a uniform fire mitigation plan that encompasses all of the units within the community to avoid numerous standards throughout the community. Also, if not already done, associations should establish standards for slash removal, stump height, revegetation, and contractor regulations.

Cedar Shakes. Summary. Associations must allow owners to replace cedar shakes or other flammable roofing material with nonflammable roofing. The statute allows for an association's declaration or bylaws to specify reasonable standards for the color, appearance, and general type of nonflammable roofing materials, but the association cannot require owners to use replacement materials that exceed the replacement costs of the flammable materials that they replace.

Comments and Association Action: The statute expressly refers to the declaration and bylaws as the documents that may contain specific standards for nonflammable roofing materials that replace flammable roofing. Associations desiring such standards may need to amend their bylaws and/or declaration. The statute does not seem to preclude an association from establishing a list of approved nonflammable roofing materials that owners may use, as long as the price of the approved materials does not exceed the replacement cost of the flammable materials.

For more information about this section, contact Suzanne at sleff@wlpplaw.com

SECTION 3
38-33.3-117(1). Applicability to preexisting common interest communities.

Summary. This section provides that the newly-added provision concerning an association's withdrawal from a merged common interest community will apply to communities existing prior to July 1, 1992 (pre-CCIOA associations). Additionally, only Subsection (2) of Section 123 of the Colorado Common Interest Ownership Act ("CCIOA") is now applicable to pre-CCIOA associations. Subsection (2) pertains to the one-year statute of limitation for enforcement of any building restrictions. Finally, Subsection (l) of Section 123 has been modified so that Section 318 of CCIOA now applies to pre-CCIOA associations. Section 318 pertains to third parties' ability to assume without inquiry the trust powers of an association when acting as a trustee. Subsection (l) is also modified to provide that Section 317 of CCIOA, as it existed prior to January 1, 2006, pertains to pre-CCIOA associations.

For more information about this section, contact Tim at tmoeller@wlpplaw.com

SECTION 4
38-33.3-117(1.5). Applicability to preexisting common interest communities.

Summary. In addition to the amendments to the existing Section 117 discussed above, the Legislature added Section 38-33.3-117(1.5) to provide a list of provisions within CCIOA pertaining to associations existing before July 1, 1992 (pre-CCIOA associations) with respect to events and circumstances occurring on or after January 1, 2006. This new provision sets forth all the sections of SB 100 pertaining to pre-CCIOA associations that have been added or modified and that will become effective January 1, 2006.

For more information about this section, contact Tim at tmoeller@wlpplaw.com

SECTION 5

38-33.3-123. Enforcement – limitation.

Summary. This section first states that an association may require reimbursement for collection costs, reasonable attorney fees, and other costs resulting from a unit owner's failure to pay assessments without commencing a legal proceeding. If a unit owner does not comply with any other provision of CCIOA, or of the association's governing documents, the association, another unit owner, or any class of unit owners adversely affected by the failure to comply may seek reimbursement for collection costs and reasonable attorney fees without commencing a legal proceeding. For each claim or defense in a proceeding to enforce or defend a provision of CCIOA or the association's governing documents, the court shall award the prevailing party reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim. If the Court finds that a unit owner did not commit the violation with which he is charged, the court must award the unit owner reasonable attorney fees and costs. The court must not award costs or attorney fees and the association will be precluded from allocating any of the costs or fees it has incurred in the unsuccessful suit to the unit owner's account. A unit owner cannot confess judgment to attorney fees or collection costs.

Comments and Association Action. This section does not seem to affect general assessment collection in any significant way, but it could affect the way the association handles collection costs and attorney fees in non-assessment cases, like covenant enforcement. While CCIOA allows the association to require payment of costs and reasonable attorney fees in collection cases, in other efforts to enforce CCIOA or its governing documents, the association may only seek costs and attorney fees.

Perhaps more troubling to the association is the portion of the act that precludes the association from allocating any costs or fees to a unit owner when the suit brought was not successful. While this may be read to mean that when the association spreads this loss throughout the community it may not be spread to the unit owner who won the case, it may also mean simply that the association may not add the lost costs and fees directly to the unit owner's ledger balance. If an association has a budget item for lost attorney fees and costs, it seems far-fetched to require that the association calculate what portion of that budget item would be applied to the lost case and spread that portion of it out among all unit owners other than the one involved in the case. Further, if that budget item is set at the beginning of the association's fiscal year, perhaps before the case even began, the point at which the association may or must separate out the amount that is due to this one particular case becomes less clear. Unfortunately, this may be one of many sections in CCIOA that will simply require case law for clarity. At this point, associations should, at the very least, immediately remove from the ledger any attorney fees that they have not been granted by the court.

For more information about this section, contact Alli at agerkman@wlpplaw.com

SECTION 6
38-33.3-124. Legislative declaration – alternative dispute resolution encouraged.

Summary. This section is a legislative recommendation to associations and homeowners to resolve their differences by alternative dispute resolution formats prior to instituting legal action through the court system. The recommendations are to mediate or arbitrate the matters. This section encourages, which should read "requires," associations to develop guidelines for mediation and/or arbitration as a precondition to filing a lawsuit, except in situations where there is an imminent threat to the peace, health and safety of the community. If an agreement is reached in mediation, the agreement may be filed with the court as a stipulation for enforcement purposes. If mediation does not resolve the issue, either party may terminate the process and go straight to court.

This section also allows associations, through their declarations, bylaws or rules, to specify which disputes the associations want to resolve only by binding arbitration. Those disputes not specified for binding arbitration will then follow the procedure set forth above, i.e., attempt to mediate, and if not successful, then the aggrieved party can file a law suit and have a judge or jury decide the outcome.

Comments and Association Action. This is generally a benign change in the law. Most courts are now requiring parties to attempt mediation prior to trial.

Knowing that litigation is expensive and divisive, the legislature is to trying to legislate civility in resolving disputes of association matters. Unfortunately, mediation, as a tool, is only successful if all parties have the good-will to reach an agreement. When one side is stuck in anger over an issue, the chance of mediation being successful is very slim. If the party or parties cannot get beyond anger or intransigence, then mediation will not work.

The statute does provide another means of dispute resolution through arbitration. While the statute focuses on mediation, the parties can also agree to "binding arbitration." Binding arbitration can be used where the parties know mediation will not be successful and they want a faster, more economical means of resolving the dispute than going to court. The parties would each choose one arbitrator and the two arbitrators would choose a third; the better, cheaper and faster method is for the parties to agree on one neutral who will serve as the arbitrator. The arbitration can be as informal as small claims court or as legalistic as district court. The matter can usually be heard and decided in a couple of months as opposed to months or years, and the case is over upon the arbitrator issuing a ruling. The parties have little opportunity to appeal the decision. The winning party can use the courts to enforce the judgment if the other side does not follow through on the arbitrator's decision.

The statute also suggests that associations can set up a procedure for binding arbitration through its governing documents. It does not change the requirements of the governing documents for passing amendments to the declarations, by-laws or rules. Whatever procedure the document requires to amend that document, the association must follow those steps.

Associations will have to develop and publish guidelines concerning alternative dispute resolution for mediation and/or arbitration. Associations should thoughtfully and carefully develop alternative resolution guidelines in much the same manner as collection guidelines.

For more information about this section, contact Larry at lbleff@wlpplaw.com

SECTION 7
38-33.3-209.4. Public disclosures required – identity of association – agent – manager – contact information.

Summary. This section requires that the association make mandatory disclosures of information to owners. Section 209.4 requires at least once per year that the association provide to all owners a written notice providing general information about the association and its governing documents. If the association's or management company's address changes, the association is required to provide all owners with an amended notice within 90 days of the change. This section also requires that, within 90 days after declarant turnover and within 90 days after the end of each fiscal year thereafter, the association shall make much of its financial and operating information available to owners upon request. Finally, this section provides that the association's required disclosure information may be disseminated in one of the following ways: by posting on a webpage, provided that the web address is e-mailed or mailed to the owners, by maintaining a binder at the association's principal place of business, by mail or

by personal delivery.

Comments and Association Action. The plain reading of the first subsection appears to require that an actual physical written notice be provided on an annual basis, notwithstanding the language of subsection (3) of this section, which sets forth a list of acceptable means of distribution of information. Regarding the second subsection's list of information and documents, this clearly may be distributed by website, e-mail, and other alternate methods of distribution set forth in subsection (3). As a practical matter, many associations will need to either post this information on their websites or will keep a binder of the documents at the association's principal place of business.

38-33.3-209.5. Responsible governance policies.

Summary. Section 209.5 requires associations to maintain accounting records using generally accepted accounting principles and to adopt rules and regulations concerning the following: (1) the collection of assessments; (2) the handling of board member conflicts of interest; (3) conduct of meetings; (4) enforcement of covenants, including notice and hearing procedures and a schedule of fines; (5) inspection and copying of Association records by unit owners; (6) its investment of reserve funds; and (7) its policies for the adoption and amendment of rules and regulations.

Comments and Association Action. None of these individual requirements are particularly onerous and, in fact, may provide the needed momentum to adopt policies that will better guide association boards in dealing with issues appropriately and consistently. What this section will require is that the policies be drafted and reviewed to ensure that they are in compliance with the association's governing documents and Colorado law. We believe that a collection and covenant enforcement policy, with information on notice and hearing procedures, warning letters, and a fine schedule are must-haves for associations.

Whether the other required policies are necessary for all Colorado associations is another matter. It would be helpful for an association to establish principles for the investment of reserve funds. Hopefully, though, the association would have professional advisors for this role who would be well-versed on the need for low-risk association reserve investment. The Colorado Revised Non-Profit Act, in C.R.S. 7-128-501, already sets forth a basic conflict of interest policy. Some associations have gone beyond the mechanism set forth in the Non-Profit Act and have adopted a more restrictive policy; although, like all things in life, there is a cost of doing so. C.R.S. 38-33.3-310.5, which was created by SB 100, goes a little further than the Non-Profit Act on this particular issue and requires, among other things, that the conflicted director abstain from voting. The records inspection policy can be helpful for certain associations. We would suggest that the policy exempts from inspection those matters that are subject to the attorney-client privilege and those matters that relate to a matter that would be discussed in an executive session under CCIOA's section 308.

38-33.3-209.6. Executive board member education.

Summary. Section 209.6 allows association boards to authorize reimbursement of board members for their expenses incurred in attending educational meetings and seminars on the responsible governance of associations.

Comments and Association Action. The Community Associations Institute, as well as numerous for-profit educational companies, provide excellent courses on this subject matter. Many community association law firms in Colorado provide such seminars on an occasional basis for no charge. This type of board member education is extremely important and should be pursued.

38-33.3-209.7. Owner education.

Summary. Section 209.7 requires the association to provide to owners, at least annually, education on the general operations of the association and the rights and responsibilities of owners, the association and its board under Colorado law.

Comments and Association Action. The board has the discretion to determine the criteria for compliance with this section. Fortunately, this section does not apply to units that have been subject to timeshare ownership. However, it does require that the association's legal counsel draft or review a policy to ensure that it is in compliance with the association's governing documents and with the best practices of the association. The association will be troubled if it educates unit owners on its method of doing things and then deviates from that method.

For more information about this section, contact David at dgraf@wlpplaw.com

SECTION 8
38-33.3-217. Amendment of declaration.

Summary. This section makes it easier for common interest communities to amend their declarations. It is effective immediately as to CCIOA associations, and, as to pre-CCIOA associations, it is effective for declaration amendments occurring after January 1, 2006.

Many declarations require a large percentage (75% or 90%) of homeowners to give their approval before a declaration can be amended. This section states that any provision in the declaration that purports to specify a percentage larger than sixty-seven percent is void as contrary to public policy, and until the declaration is amended, such provision shall be deemed to specify a percentage of sixty-seven percent.

In addition, many existing declarations require approval of a certain percentage of mortgagees before the declaration amendment is effective. This section also states that, if the declaration requires first mortgagees to approve the amendments, the association shall send a dated, written notice and copy of any proposed amendment by certified mail to each first mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof. In addition, the association will need to publish the notice. If the first mortgagee does not deliver a response to the association within sixty days after the date of the notice, it shall be deemed to have approved the proposed amendment.

Comments and Association Action. This new provision will make it much easier for many associations to amend their declarations. In the past, it has been virtually impossible to obtain approvals from a high percentage of owners, or any approval from lenders. While petitioning the court for approval of an amendment is still an option, this section provides another viable option. Beware that this talks only about amending the declaration, not about other governing documents, and, while amending other governing documents is generally less onerous, the process is often very different. Any amendment to the declaration or other governing documents should be approached with caution, both from the perspective of the substantive amendment as well as the process to be followed. If you have questions about amending your governing documents, you should check with your legal counsel.

For more information about this section, contact Mark at mpayne@wlpplaw.com

SECTION 9

38-33.3-221.5. Withdrawal from merged common interest community.

Summary. This section addresses the relatively rare circumstance where two common interest communities have been merged or consolidated. Under the circumstances specified, the merged or consolidated community can withdraw from the merged community without the consent of the other community involved. To take advantage of this section, the community wanting to withdraw must meet the following criteria:
(1) it is a separate platted community;
(2) its owners pay assessments to two common interest communities;
(3) it is or has been a self-operating common interest community continuously for 25 or more years;
(4) the total number of unit owners comprising it is 15% or less of the total number of units in the merged or consolidated community;
(5) its unit owners have approved the withdrawal by a majority vote and the owners of units representing at least 75% of the allocated interests in the community participated in the vote; and
(6) its withdrawal will not substantially impair the ability of the remainder of the community to enforce existing covenants, maintain existing facilities or continue to exist.

This section is effective January 1, 2006, and is applicable to both CCIOA and pre-CCIOA communities.

Comments and Association Action. As noted above, this new provision will apply to a very limited number of common interest communities. This section does not affect the relationship between master and subassociations, or allow subassociations to withdraw from master associations. If you believe that this provision might apply to your association and you think it is in the association's best interests to withdraw from the merged association, you should consult with your association's legal counsel to make sure the specified criteria are met. As with many other provisions of CCIOA, attempting to withdraw without the assistance of legal counsel will most certainly lead to frustration and further delays and expense.

For more information about this section, contact Mark at mpayne@wlpplaw.com

SECTION 10
38-33.3-223. Sale of unit – disclosure to buyer.

Summary. This section adds a new provision to CCIOA which requires sellers of property within common interest communities to provide certain information to buyers. In particular, sellers must provide the following documents to buyers:
(a) the bylaws and rules of the association;
(b) the declaration;
(c) the covenants;
(d) any party wall agreements;
(e) minutes of the most recent annual unit owners' meeting and of any executive board meetings that occurred within the six months immediately preceding the title deadline;
(f) the association's operating budget;
(g) the association's annual income and expenditures statement; and
(h) the association's balance sheet.

A seller must provide all documents by the title deadline established in the real estate contract for the property. A buyer may terminate the contract upon written notice to the seller, on or before the governing documents objection deadline, of any unsatisfactory provision within any of the documents

listed above. Failure to provide such written notice to the seller by the governing documents objection deadline waives the buyer's right to terminate the contract on this basis. The seller and buyer may mutually agree to alter the deadlines for providing the documents and submitting written notice. Associations must make all of the documents listed above available to owners. This section of the statute does not apply to foreclosure sales or to the sale of time-share units.

Comments and Association Action: This section of the statute replicates the language of the standard Colorado Real Estate Commission-approved Contract to Buy and Sell Real Estate. The contract form currently includes an option by which the seller must provide the same documents listed above to the buyer, with the same deadlines and opportunity to object to the documents. This statute creates an obligation for associations to have all of the documents listed above readily available for sellers. Associations may find that placing each of the applicable documents on the internet reduces the burden on managers and/or board members to assist individual sellers. Associations should also consider adopting policies concerning requests for documents and the costs for copying and compiling documents. Such policies may not conflict with the mandatory disclosure requirements of Section 209.4.

For more information about this section, contact Suzanne at sleff@wlpplaw.com

SECTION 11
38-33.3-301. Organization of unit owners' association.

Summary, Comments and Association Action. This section addresses the choice of entity for an association. This is not a section that will have much effect on the daily operations of associations. Section 38-33.3-301 of CCIOA requires that an association be organized as an entity in accordance with the laws of the State of Colorado. The amendment to this section merely states that neither the choice of entity nor the organizational structure of the Association will affect its substantive rights and obligations under CCIOA. Incredibly, our office did face a challenge to an Association's authority based on its choice of entity, despite the plain language of CCIOA's section 301, which gives associations the option to choose their entity in this regard.

For more information about this section, contact David at dgraf@wlpplaw.com

SECTION 12
38-33.3-302. Powers of unit owners' association.

Summary, Comments and Association Action. Section 38-33.3-302 of CCIOA has been altered to provide that, in addition to the association, the managing agent and employees are also subject to the provisions therein. The new law further provides that decisions concerning the approval or denial of the unit owner's application for architectural or landscaping changes must be made in accordance with standards and procedures set forth in the association's declaration or adopted regulations and may not be made arbitrarily or capriciously. What this means to associations is that they must put together and adopt detailed guidelines with regard to architectural control and other landscaping issues to reinforce that decisions are not being made arbitrarily.

Further changes to Section 302 of CCIOA include the ability of associations to terminate management contracts for cause without penalty to the association. Additionally, associations that include timeshare units are excluded from the ability to terminate the management contracts for cause without penalty.

For more information about this section, contact Tim at tmoeller@wlpplaw.com

SECTION 13
38-33.3-303. Executive board members and officers – powers and duties – audit.

Summary. This section requires that the books and records of the association be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, at least once every two years by a person selected by the executive board, who must be a certified public accountant in the case of an audit. However, the requirement to obtain an audit only applies in the following circumstances:
(1) the association has annual revenues or expenditures of at least two hundred fifty thousand dollars; and
(2) an audit is requested by the owners of at least one-third of the units represented by the association.

Copies of the audit or review must be made available upon request to any unit owner beginning no later than 30 days after its completion.

This section does not apply to any association that includes time-share units.

This section is effective January 1, 2006, and is applicable to both CCIOA and pre-CCIOA communities.

Comments and Association Action. Prior to this provision, an association was only required to provide an audit if its governing documents so specified. In addition, upon turnover from declarant control, the declarant, under Section 303 of CCIOA, is required to provide an audit. Now, however, a review must be obtained at least every two years, and upon the specified conditions being satisfied, the association must obtain an audit. Since either an audit or review must be obtained every two years, for every association, either an audit or review must be obtained before January 1, 2008. Newly adopted Section 209.4, which requires disclosure of certain documents, requires that the results of any financial audit or review for the fiscal year immediately preceding the current annual disclosure be provided to all unit owners, i.e., if an audit or review were performed under this new section, then it must be provided as part of the disclosures required by Section 209.4, without cost to the owners. If the audit or review is provided other than as part of the required disclosures, then presumably, the association could charge the reasonable cost of providing a copy of the audit or review.

For more information about this section, contact Mark at mpayne@wlpplaw.com

SECTION 14
38-33.3-308. Meetings.

Summary. This section modifies the already-existing section 308 of CCIOA, which governs meetings of the unit owners. The amendment requires that notice of members' meetings be posted in a conspicuous place, to the extent that it is feasible and practical, in addition to any electronic posting and/or e-mails given to the owners. The section goes on to encourage associations to provide notices and agendas in electronic form, through a website or otherwise, in addition to the printed notices.

If the association has the ability, it must provide notice of regular and special meetings of the owners by e-mail to all unit owners who request e-mail notices and who provide the association with their e-mail addresses. Notices of a regular or special meeting of the members must be given at least 24 hours before the meeting. Again, this section does not apply to timeshare units. This section also restates the fact that members' meetings and directors' meetings are open to unit owners and their designated representatives. Unit owners desiring to speak at regular and special meetings of the members shall be entitled to do so.

With regard to regular and special meetings of the board of directors, non-board members may not participate in any discussion unless a majority of a quorum of the board authorizes such participation--subject to the ambiguity in the statute discussed below. This section also allows the board to place reasonable time restrictions on members speaking during the meeting.

The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a unit or unit owner's designated representative to speak before the board takes formal action on an item under discussion. The board shall provide for a reasonable number of persons to speak on each side of an issue—if there are any, of course. This section as modified could be argued to require that the board permit each and every unit owner or their designated representative to speak on an item under discussion. Of course, this section does not apply to units subjected to timeshare ownership either.

Finally, the modifications to the statute allow the board to disclose, should it deem appropriate, the legal advice that the board received regarding a matter that has now been resolved. This is not mandatory and merely gives the board the discretion to convey the attorney-client privileged information or not.

Comments and Association Action. Posting the notice of owners' meetings in the community is now required. E-mail notices of meetings are required if possible. It is unclear whether owners shall be permitted to speak at regular and special meetings of the board. Given the uncertainty in the statute, boards may be well advised to allow owners to speak on items under discussion. Regarding the attorney-client privilege, there does not appear to be any change of significance because the attorney-client privilege already belongs to the entity (the association) which, through its board, has the ability to waive that privilege and disclose legal advice as the board deems appropriate.

For more information about this section, contact David at dgraf@wlpplaw.com

SECTION 15
38-33.3-310. Voting – proxies.

Summary. Amendments to CCIOA's section 310 require voting by secret ballot for the executive board positions as well as any other matters affecting the community upon the request of one or more owners. The ballots will be counted by a neutral third party, or a unit owner who is not a candidate, selected at random from a pool or two or more such unit owners. The results of the vote shall be reported without reference to names, addresses, or any other identifying information. The amendments also state that a proxy shall not be valid if obtained through fraud or misrepresentation. The section goes on to state that, unless the governing documents provide otherwise, the proxies shall be appointed in accordance with the Colorado Revised Nonprofit Act's section 7-127-203, which is pretty much the way it would be prior to this amendment—unless, of course, the governing documents provide otherwise.

The remainder of Section 15 merely restates provisions that, for the most part, already exist in the Colorado Revised Nonprofit Corporation Act governing the acceptance and rejection of ballots, waivers, proxy appointments or proxy revocation documents. Like the language in the Non-Profit Act, these sections are helpful to associations because they re-state the following three precepts:

(1) If the association has a reasonable basis to doubt the validity of a signature or the signatory's authority to sign for the unit owner, and it is acting in good faith, it can reject the document;
(2) The association, acting in good faith and in accordance with law, is not liable for any damages due to its acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment or proxy appointment revocation; and
(3) That any action of the association based on an acceptance or rejection of such a document is valid

unless a court determines otherwise.

Comments and Association Action. The secret ballot requirement means that, when voting for directors, and when voting for any other matter (upon the request of at least one owner), voting must take place by secret ballot. This would apply even if there were no new candidates on the ticket or if there were no opposing votes. How this secret ballot requirement will interact with an association's or a member's desire to direct their proxy (i.e., to require their proxy to vote in a specific manner) is unclear. The acceptance and rejection of votes remains unchanged.

For more information about this section, contact David at dgraf@wlpplaw.com

SECTION 16
38-33.3-310.5. Executive board – conflicts of interest.

Summary. This section does not apply to time-share units.

In any decision participated in by a board member that benefits him or herself, a parent, grandparent, spouse, child, and/or sibling, that board member must declare that, in the matter before the board, she or he has a conflict of interest. This must be made in the open meeting prior to the discussion. The member may still participate in the discussion but cannot vote on it.

If there is a violation of the conflict of interest provision, any contract entered into in violation of this section is void and unenforceable.

If the association has stricter rules concerning conflicts of interests, the association documents trump the statute. As an example, if there is a conflict of interest issue, and the bylaws state that, not only can the person having the conflict not vote, but she or he must excuse her or himself from discussion, the stricter association rule would prevail over the statute.

Comments and Association Action. The statute is self-explanatory. If there is a financial benefit to a board member, which could include benefits to that member's business associates, or to any board member's relatives, in a matter before the board for consideration, the board member should not participate in the voting.

The board should be aware of all conflicts. There is the obvious breach of fiduciary duty if the board allows a violation of the conflict of interest rule, but there are also the consequential damages that the association can be responsible for if an otherwise valid contract with an innocent party is declared void.

For more information about this section, contact Larry at lbleff@wlpplaw.com

SECTION 17
38-33.33-315. Assessments for common expenses.

Summary. Allows associations to enter into agreements with mortgage companies to have assessments included in the homeowner's mortgage payment, assuming it does not provide otherwise in the association's declaration or bylaws.

Comments and Association Action. This section of the statute is permissive and does not require any immediate attention from an association. If an association opts to try this, and it is not prohibited by its declaration or bylaws, it must comply with applicable rules of the Federal Housing Authority, or other

government agency.

For more information about this section, contact Alli at agerkman@wlpplaw.com

SECTION 18
38-33.3-317. Association records.
Summary. This does not apply to time-share units.

This section lists what records the association needs to make permanent, what records need to be made available to homeowners for inspection and copying, and certain restrictions on homeowner requests for documents.

The association needs to keep permanent records of all minutes and actions taken by its executive board and committees, and records of all waivers of notices of meetings of the unit owners, board, or committees of the board. The association needs to keep a list of the names and addresses of all unit owners and the number of votes each unit owner is entitled. The association shall maintain written records or records which can be converted to a written record, such as discs. All financial records and other records shall be available for inspection and copying by unit owners or owners' agents. The association can charge its actual costs of copying to the owner.

The records requested by the unit owner need to be reasonably available during business hours, upon notice being given five business days in advance, to the extent:

(1) The request is made in good faith and for a proper purpose;
(2) The request describes with reasonable particularity the records sought and the purpose of the request; and
(3) The records are relevant to the purpose of the request.

The following records need to be kept at the association's principal office:

(a) Articles of incorporation, if any;
(b) Declarations, covenants and bylaws;
(c) Resolutions adopted by the board relating to the characteristics, qualifications, rights, limitations, and obligations of unit owners or any class or category of unit owners;
(d) Minutes of all unit owners' meetings and records of all actions taken by unit owners without a meeting for the past three years;
(e) All written communications to unit owners for the past three years;
(f) Names, addresses and telephone numbers of current directors and officers;
(g) The most recent annual report, if any; and
(h) All financial audits or reviews conducted during the immediate past three years.

The homeowner can have access to the records even if in litigation with the association, and the association can be required to turn over records by the court on the showing of a proper purpose.

Also, if the association has more liberal provisions regarding inspection, the association's more liberal rules will prevail.

Comments and Association Action. This new section basically reiterates the requirements regarding inspection of records, but it lists more specifically the records that should be made available for inspection. It also establishes a central location for the records to make it easier for the owner to inspect

and review.

The most important impact for the association will be, if it is not doing so now, to keep permanent records at a central location and to be more open and willing to provide records to homeowners. The association should have specific and valid reasons for not making a document available, such as attorney-client privilege, privacy/employment act prohibitions, etc. Not wanting to allow the owner to see the records, alone, will not survive a court challenge.

For more information about this section, contact Larry at lbleff@wlpplaw.com

SECTION 19
38-35.7-102. Disclosure – common interest community – requirement for architectural approval.

Summary. This section of SB 100 requires that sellers of units located in common interest communities provide certain disclosures concerning the covenants and restrictions to buyers. The required disclosures include all of the documents set forth in section 223 of CCIOA, along with a bold-faced, typed statement concerning: (1) the buyer's acknowledgement and receipt of the section 223 documents; (2) recognition of the covenants as a contract between the buyer and the association; (3) the buyer's obligation to pay assessments; and (4) the fact that the covenants may require architectural approval for any exterior improvements to the property. This provision establishes the deadline for furnishing these documents to the buyer in the case of a brokered transaction and for a sale by the owner. The statute further requires the seller to provide a signed acknowledgement of receipt of the above-listed information to the association at the time of closing. This provision establishes a statutory claim for relief by the buyer and against the seller for damages resulting from the seller's failure to provide the requisite information and disclosure statement to the buyer. The seller will not be held liable if the association withheld documents or failed to maintain records as required. This section does not apply to time-share units.

Comments and Association Action. This provision places the onus on sellers to provide association documents and records to buyers prior to the transfer of ownership. Sellers that fail to provide the proper documentation may face legal challenge. Buyers will remain responsible for reviewing the documents and considering the implications of the covenants and restrictions. Associations should have all of the necessary documents ready and available for sellers upon request, as required by section 223 of CCIOA.

For more information about this section, contact Suzanne at sleff@wlpplaw.com

SECTION 20
10-4-110.8. Homeowner's insurance – prohibited practices – definitions.

Summary. This portion of Senate Bill 100 is not an amendment to CCIOA but an amendment to an existing statute regarding homeowners insurance. The new law provides that a unit owner within a common interest community may file a claim against the association's insurance policy to the same extent, and with the same effect, as if the unit owner were an additional named insured.

Comments and Association Action. Associations should create written policies and procedures for the filing of claims against the association's insurance. Individual associations should also discuss this new provision with the association's insurer in order to best plan for the association's risk management.

For more information about this section, contact Tim at tmoeller@wlpplaw.com