

State of Colorado: Frequently Asked Questions  
Presented and Submitted by Loura Sanchez  
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FAQ'S REVISED WITH EDITS

**Question 1: What state statutes apply to Common Interest communities in your State?**

There are several possible state statutes which may apply to Common Interest Communities ("CIC"):

Colorado Revised Non Profit Corporation Act (" Non Profit Act") which applies to all Colorado Non Profit corporations; Colorado Common Interest Ownership Act ("CCIOA") which applies in its entirety to all associations created after July 1, 1992. In addition, certain portions of CCIOA apply to associations created before July 1, 1992.

Note: CIC's are defined in Section 103(8) of CCIOA as "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." The following list, although not exhaustive, provides other laws an association should be aware of.

Colorado Fair Housing Act, Colorado Fair Debt Collection Practices Act, & the Solar Panel Statute.

**Question 2: Are Common Interest Communities required to incorporate? Can they be incorporated? Advantages/Disadvantages?**

No. Common Interest Communities can be incorporated, but are not required to be. However there is a strong incentive to incorporate to gain entitlement to the statutory lien for assessments.

**Question 3: Is there a state agency which has authority to regulate and oversee the affairs of Common Interest Communities? What is the scope of its power and authority?**

No. However HB 10-1238 created an HOA Information and Resource Center which is: housed within the Colorado Division of Real Estate and acts as an information clearing house relating to the basic rights and duties of unit owners, declarants, and associations. In addition, effective January 1, 2011, CIC's will be required to register with the state.

**Question 4: On the state level, what are the annual reporting requirements of a Common Interest Community, if any, and to whom?**

A periodic report must be filed with the Secretary of State. In addition, §38-33.3-209.4 requires that CIC's make certain annual disclosures to owners.

**Question 5: Is an annual meeting of members required?**

Yes, both the Non Profit Act and CCIOA. Require CIC's to hold meetings of unit owners as members of the association "at least once each year".

**Question 6: How are Special Meetings of the Members called?**

§38-33.3-308(1) of CCIOA, provides that special meetings of members can be called by the board president, by a majority of the executive board, or by the request of the unit owners having 20% (or any lower percentage that may be specified in the bylaws) of the votes in the association.

If the demand for a special meeting is made by owners pursuant to the above CCIOA provision §7-127-102(3) of the Non Profit Code requires the board to mail out notice of the special meeting within 30 days of when such demand is made. If a board fails to mail out the special meeting notice within this time frame, any owner who signed the demand for the special meeting may set the time and place of the meeting and send out notice to the owners of such meeting.

The above §308(1) of CCIOA does not apply to associations that are not CIC's, but such associations remain subject to the requirements of the Non Profit Act §7-127-102(1)(b), which allows special meetings to be held upon call of the board or upon demand by owners representing at least 10% of the votes entitled to be cast in the association unless the bylaws specify something different.

#### **Question 7: What are the Notice Requirements for Membership Meetings?**

§38-33.3-308(1) of CCIOA requires notice to be sent out by the association no less than 10, nor more than 50 days prior to the meeting. The notice must either be hand-delivered or sent via U.S. Mail. Emailed and faxed notices will not suffice. In addition to the mailing (or hand-delivery) of notices, CCIOA requires notice of membership meetings to be physically posted in a conspicuous place within the community if such placement is feasible. Additionally, CCIOA encourages associations to provide owners with electronic notification of membership meetings by posting such notices on the website or emailing the notices to owners.

The notices themselves must contain the time and place of the meetings as well as notice of any proposed revisions to the declaration or bylaws, proposed budget changes, and if applicable, any proposals to remove a director.

Associations that are not CIC's remain subject to §7-127-104(3) of the Non Profit Act, which requires notice to be "fair and reasonable".

#### **Question 8: What are Quorum Requirements for Membership Meetings?**

Quorum requirements are typically set forth in the governing documents of an association—usually the bylaws. However, if the governing documents for a community do not contain a quorum requirement, both CCIOA and the Non Profit Act provide default requirements.

An association created after July 1, 1992, that has no quorum requirement in its documents can utilize Section 309 of CCIOA, which sets quorum at 20% of the votes that may be cast if the community has less than 1,000 units. For associations with more than 1,000 units, quorum is set at 10% of the votes that may be cast.

For communities created prior to July 1, 1992, or associations that do not qualify as Common Interest Community. § 7-127-205(1) of the Non Profit Act provides a default quorum of 25% of the votes entitled to be cast.

#### **Question 9: Can Members use Proxies? Absentee Ballots? Mail Ballots?**

Proxies are allowed by both CCIOA and the Non Profit Act statute unless otherwise prohibited in the governing documents.

Absentee ballots are not addressed in either, and therefore are handled on a case-by-case basis as the governing documents of an association allow.

Mail ballots are authorized by §7-127-109 of the Non Profit Act, and may be used in lieu of a meeting if not otherwise prohibited in the bylaws.

**Question 10: Can Members Raise Concerns or Issues at a Membership Meeting?**

Neither CCIOA, nor the Non Profit Act specifically addresses this issue. However, it would stand to reason that a “membership” is for the benefit of the members (i.e. owners) and owners should be allowed to raise issues and concerns at such meetings unless the governing documents for the community provide something different or more specific.

**Question 11: Can non-Members attend Membership Meetings? (Attorneys of Members? Guests of Members? Local or National Media representatives?)**

§38-33.3-308(2.5) of CCIOA requires all membership meetings to be open to every unit owner of the association or to any person designated by a unit owner in writing as the unit owner’s representative. Because “designated representative” is not defined in CCIOA, or elsewhere, this term is typically loosely interpreted as including a power of attorney or any other written designation of representation.

**Question 12: Are boards of directors required to hold regular board meetings?**

Neither CCIOA nor the Non Profit Act requires an association’s board of directors to conduct regular board meetings. Any such requirement would be specific to the governing documents of the association in question, particularly the bylaws.

**Question 13: How are special meetings of the board called?**

§7-128-203(2) of the Non Profit Act, requires at least two days notice to all directors of the date, time and place of all special meetings of the board. However, the bylaws may provide for a longer or shorter period. An associations bylaws will specify which directors or officers may call a meeting.

**Question 14: What are the notice requirements for board meetings? Are members required to be notified as well?**

Neither CCIOA nor the Non Profit Act require any notice of board meetings to members. An association’s bylaws may provide specific notice requirements to the Board Members.

**Question 15: What constitutes a quorum for board meetings?**

§38-33.3-309(2) of CCIOA states, in part, that “unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting or grant their proxy...” The Non Profit Act likewise allows the bylaws to provide for a greater percentage, or a lesser percentage to constitute a quorum in §7-128-205(1), and sets the default quorum at a majority of the number of directors in office.

**Question 16: Can board members use proxies?**

Yes, board member proxies are authorized in §38-33.3-309(2) of CCIOA and §7-128-205(4) of the Non Profit Act if provided for in the bylaws. The proxy counts for purposes of determining quorum and allows the casting of a vote for or against a particular proposal. The proxy must be in writing and signed.

**Question 17: Which meetings of the board of directors are open to all homeowners?**

§38-33.3-308(2)(a) of CCIOA mandates that all regular or special meetings of the board, or any committee thereof, be open to attendance by all members of the association or their representatives.

**Question 18: Does a member have the right to address the board of directors during the meeting?**

Yes, CCIOA requires that members be given the opportunity to speak on issues before the board. CCIOA §38-33.3-308(2.5)(b) allows the board to choose an appropriate time for members to speak with regard to issues under discussion, with the lone requirement that such opportunity be provided prior to the board's vote on said issues. This provision also allows the board to put reasonable time limitations on the members' right to speak.

**Question 19: Can the board of directors meet in closed or executive session? If so, for what purposes?**

Yes. §38-33.3-308(3) of CCIOA allows the board to hold an executive or closed door session for the purpose of discussing the following limited items (set forth in subsection 4): (a) matters pertaining to employees of the association or the managing agent's contract; (b) consultation with legal counsel regarding pending lawsuits or matters of attorney client privilege; (c) investigative proceedings concerning criminal misconduct; (d) matters subject to constitutional, statutory or judicially imposed requirements protecting matters from public disclosure; (e) any matter the disclosure of which would constitute an unwarranted invasion of privacy; and (f) review or discussion of communications from legal counsel.

**Question 20: Are minutes of board meetings required? When can members see the minutes of such meetings?**

Yes, §38-33.3-317 of CCIOA states that the association shall keep as permanent records minutes of all meeting of the executive board. Furthermore, all such minutes and other required association records must be made reasonably available for examination and copying by any member and such member's authorized agents.

**Question 21: Does a member have a right to audio or video record meetings of the board? Under what circumstances or conditions?**

No. Though members have the right to attend all board meetings, they have no right to audio or video record any of such meetings, unless such right is provided in the association's governing documents. This right is not provided in either CCIOA or the Nonprofit Act.

**Question 22: Can non-members attend board meetings?**

Yes. If designated by the member in writing as the representative of such member, a non-member may attend any board meeting as provided in §38-33.3-308(2.5)(a) of CCIOA.

**Question 23: Does a Member have a right to review books and records of the**

**Association? If so, what books and records can be reviewed?**

Yes. §38-33.3-317 (2) of CCIOA provides the following:

(a) Except as otherwise provided in paragraph (b) of this subsection (2), all financial and other records shall be made reasonably available for examination and copying by any unit owner and such owner's agents.

**Question 23A:** An owner and the owner's agent(s) may examine and copy all financial and other records. Although the statute does not clarify what constitutes a "financial or other record", it does provide the following laundry list of records that must be kept by the association for review and inspection by the Membership:

- Minutes of all board and unit owner meetings;
- All actions taken by the board or unit owners by written ballot instead of holding a meeting;
- All actions taken by a committee on the behalf of the board instead of the board acting on behalf of the association;
- All waivers of the notice requirements for unit owner meetings, board member meetings, or committee meetings.
- Articles of incorporation or if not a corporation, the applicable organizational documents;
- The declaration;
- The covenants;
- Its bylaws;
- Board resolutions affecting unit owners;
- Minutes of all unit owner meetings and records of any actions taken by unit owners without a meeting in the past three years;
- All written communications within the last three years to unit owners generally as unit owners;
- A list of the names and the business or home addresses of the current board and its officers;
- Its most recent annual report, if any;
- All financial audits or reviews required by section 38-33.3-303(4)(b) conducted in the last three years.
- A record of unit owners that allows the preparation of a list of the names and addresses of all unit owners as well as the number of votes each has. [This requirement does not apply to time-share communities.]

However, an owner may not obtain or use a membership list "if unrelated to the owner's interest as a unit owner" without consent of the executive board. The foregoing is clarified as including, but not limited to, use of the membership list for the following purposes:

- (A) used to solicit money or property unless such money or property will be used solely to solicit the votes of the unit owners in an election to be held by the association;
- (B) Used for any commercial purpose; or
- (C) Sold to or purchased by any person.

§38-33.3-317(2)(b)(II) of CCIOA

For an owner to be able to inspect and copy any association records, the owner's request must be made in good faith, for a proper purpose, and describe with reasonable detail what records are needed and why. Requested documents must also be relevant to the unit owner's stated purpose for the request.

**a. Can the Member obtain copies of the books and records requested?**

Yes. Colorado law specifically allows an owner to obtain copies of the records requested. However, the association may charge for such copies, as long as the charge does not exceed its actual costs as specified by §38-33.3-317(3) and (4) of CCIOA.

**b. Does a Member have to pay for copies of the books and records?**

Yes. Per §38-33.3-317(3) and (4) of CCIOA, an association may charge a fee for copying records, which may be collected in advance, but this fee may not exceed the association's actual cost of copying.

**c. Are there books and records which the Association can withhold or otherwise prevent a Member from reviewing?**

If an owner fails make a request appropriately (i.e., in good faith, for a proper purpose, describing with reasonable detail the records requested and why, and with the records requested being relevant to the stated purpose), then the association may withhold inspection of such records.

**Question 24: What are the reserve requirements in the State? Are reserve studies mandated? What reporting requirements does the Association have with respect to the status of the reserves, the reserve accounts or the funding of the reserves?**

Colorado does not require associations to establish reserve funds nor does it specify any particular amount to be held in reserve. Reserve requirements, if any, are contained in the governing documents.

However §38-33.3-209.5(1)(b)(IX) of CCIOA requires an association adopt a Reserve Study policy as follows:  
When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the association and whether there is a funding plan, projected sources of funding, and whether the reserve study is based on a physical analysis and financial analysis. For the purposes of this subparagraph (IX), an internally conducted reserve study shall be sufficient.

Essentially, the association must adopt a policy that addresses when a reserve study will be done, whether it will be based on a physical and financial analysis, whether there is a funding plan for the study and, if so, the possible sources of funding (e.g., regular assessments, special assessments, borrowing, etc.).

Per §38-33.3-209.4(2) of CCIOA, associations must make the following information available to unit owners, on an annual basis: (1) any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure, and (2) the association's responsible governance policies adopted under section 38-33.3-209.5, which includes the reserve study policy discussed above.

**Question 25: What are the resale disclosure requirements?**

Colorado law does not require the association to make any general disclosures upon resale. However, C.R.S. § 38-35.7-102 requires sellers to include, on every contract for the sale of property in a common interest community, a disclosure statement in bold-faced type that substantially states the following:

**The property is located within a common interest community and is subject to the declaration for such community. The owner of the property will be required to be a member of the owner's association for the community and will be subject to the bylaws and rules and regulations of the association. The declaration, bylaws, and rules and regulations will impose financial obligations upon the owner of the**

**property, including an obligation to pay assessments of the association. If the owner does not pay these assessments, the association could place a lien on the property and possibly sell it to pay the debt. The declaration, bylaws, and rules and regulations of the community may prohibit the owner from making changes to the property without an architectural review by the association (or a committee of the association) and the approval of the association. Purchasers of property within the common interest community should investigate the financial obligations of members of the association. Purchasers should carefully read the declaration for the community and the bylaws and rules and regulations of the association.**

**Question 26: Does the membership by vote or the board of directors establish the assessment?**

The annual assessment is established by the Board of Directors; however, whether or not the amount will need to be approved or ratified by the Membership will depend on whether the association was formed on or after July 1, 1992. If an association was formed prior to July 1, 1992 (pre-CCIOA), the need to obtain Membership approval for an annual assessment is document specific. If an association was formed after July 1, 1992 (post-CCIOA), any Board-proposed budget for the annual assessment must be submitted to the Membership for ratification. Specifically, §38-33.3-303 (4)(a) of CCIOA provides:

Within ninety days after adoption of any proposed budget for the common interest community, the executive board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider the budget. ...

Unless the declaration requires otherwise, the budget proposed by the executive board does not require approval from the unit owners and it will be deemed approved by the unit owners in the absence of a veto at the noticed meeting by a majority of all unit owners, or if permitted in the declaration, a majority of a class of unit owners, or any larger percentage specific in the declaration, whether or not a quorum is present. In the event the proposed budget is vetoed, the periodic budget last proposed by the executive board and not vetoed by the unit owners must be continued until a subsequent budget proposed the executive board is not vetoed by the unit owners.

**Question 27: Is a budget required?**

If your community is a pre-CCIOA common interest community (i.e., created prior to July 1, 1992), budgeting requirements are document specific. If your community is a post-CCIOA common interest community (i.e., created on or after July 1, 1992), assessments must be based on a budget, adopted at least annually pursuant to §38-33.3- 315 (1) of CCIOA.

**Question 28: Is an annual audit required?**

An audit is only required if both of the following conditions are met: (1) the associations annual revenues or expenditures are at least two hundred fifty thousand dollars; AND (2) the owners of at least one-third of the association's units request an audit. See §38-33.3-303(4)(b)(II) of CCIOA.

**Question 29: Does the state regulate the collection of assessments?**

No. Colorado does not regulate the collection of assessments. However, CCIOA does provide the association remedies for failure to pay assessments in a timely manner. CRS 38-33.3-316 provides that the association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. This provision also allows, unless the declaration provides otherwise, that any "fees, charges, late charges, attorney fees, fines, and interest are enforceable as assessments.

In addition, Article 38 of CCIOA provides the authority and specific procedures for an association's foreclosure of assessment liens.

a. What happens if a Member is delinquent in the payment of assessments?

See above with respect to lien and foreclosure rights.

In addition, the governing documents may provide for other remedies, such as suspension of voting rights and/or common element use rights for failure to pay assessments.

b. How can an association increase annual assessments?

An association may increase annual assessments through its adoption of a budget which reflects the increase. However, the budget process itself is document specific, and there are several variations. Some declarations will require Owners to approve the budget or any increase. Some will require Owner approval for any increase above a specified maximum amount of annual assessments. Some are silent and allow the Board to approve. The association is required to follow the process in its governing documents.

If, however, the association is a post-CCIOA community, the association must use the CCIOA budget-ratification process. Per CRS 38-33.3-303(4)(a), after a post-CCIOA board adopts a proposed budget, it must submit it to the Owners for ratification at a meeting. At such meeting, the budget is deemed approved unless a majority of all Owners, or such larger percentage stated in the declaration, vetoes the proposed budget, regardless of whether a quorum is present. If the proposed budget is vetoed, then the current budget remains in place until a new budget is ratified by the association pursuant to the same procedure.

c. Under what circumstances can my association levy special assessments?

It is document specific, however, typically a special assessment maybe levied to defray in whole or in part unexpected costs associated with the repair, maintenance or operation of the community. Some governing documents require approval of the owners to levy a special assessment while others do not. Some governing documents allow special assessments to be levied only for specific purposes.

d. Are there provisions related to additional assessments or adjustments in the budget or assessment level in the event of a deficit?

Yes, the Association may either levy a special assessment or if the Association is a Post CCIOA community, the Board may revise the budget and call for a special meeting of the Owners for ratification, per the procedures discussed in response to subsection (b) above .

**Question 30: What authority does the association have to access a Unit or Lot?  
under what circumstances?**

For post-CCIOA communities, §38-33.3-307 of CCIOA requires each owner to afford to the association and its agents or employees, access through such owner's unit reasonable necessary for the purpose of fulfilling the association's obligation to maintain, repair, and replace the common elements.

Other than the above, authority to enter a Unit or Lot is document specific with respect to both the access authority itself and the scope of purposes for which the entry is authorized.



**Question 31: Does the association have the authority to adopt rules & regulations? By law or by statute?**

CIC's have the authority to adopt rules and regulations per §38-33.3-302 (1)(a) of CCIOA.

**Question 32: Does the Association have the authority to assess charges or fines for violations by Members? Does the Association have the right to suspend the right of use of the common elements or common areas in the event of a violation? To suspend the right of a Member to vote or otherwise participate in the Association in the event of a violation?**

§38-33.3-302(1)(k) of CCIOA provides that all association have authority to fine so long as due process is followed. This includes notice to the owner and an opportunity for a hearing. They also have authority to impose late charges and interest.

No state statutes authorize the suspension of use of common areas or voting rights, therefore the authority must be contained in the governing documents.

**Question 33: Is there a requirement to have an internal administrative Complaint or Dispute Process? Is it mandatory and/or a prerequisite to other legal action'?**

§38-33.3-209.5 of CCIOA requires that every association have an alternative dispute resolution policy but the type of dispute resolution is not mandated. Also, CIC's are required to have a policy regarding enforcement of covenants and rules, including notice of procedures and a schedule of fines. Failure to have such policies can result in a bar to legal action to collect fines.

**Question 34: Does any applicable statute provide for the removal of a Board Member, several Board Members, or the entire Board? Under what conditions? Who decides upon their successors and when?**

§7-128-108 of the Non Profit Act, allows for the removal of one, more than one, or all directors with or without cause by the membership if the membership elected such director(s). If the director was appointed by the board, the board may then remove such director with or without cause.

Directors may only be removed at a meeting called for that purpose and the notice must indicate the removal vote as a ballot measure. A director may only be removed if the number of votes cast to remove him/her would be sufficient to elect a director.

Upon a removal, §7-128-110 of the Non Profit Act, provides that board vacancies may be filled by the membership or by the remaining board members unless the association's bylaws provide a different method.

**Question 37: What action(s) can an association take in the event of non-payment of association assessments? Is foreclosure an option'? Under what circumstances? (Please address judicial and non-judicial foreclosure.)**

Associations have two courses of action with regard to collection of delinquent assessments; they can pursue their rights through the individual owner, or through the property. Owners are personally liable for the assessments that were incurred during their ownership of the property and associations have the right to bring a lawsuit against the owners as individuals for unpaid assessments. Lawsuits for collection of unpaid assessments are typically brought in the County Court, which has a jurisdictional limit of \$15,000.00 and a speedy litigation process. Foreclosure of the assessment lien is also an option. In Colorado only the Public

Trustee can use non-judicial foreclosure, so the Association's foreclosure must be judicial and follows a somewhat lengthy court process. Judicial foreclosures must be brought in District court and may take approximately 6 months.

**Question 38: Are there state laws that regulate whether a Member can be assessed a charge or otherwise fined by my association for violations? What violations trigger this authority? What procedures must be followed?**

§38-33.3-302(k) of CCIOA authorizes associations to levy reasonable fines after notice and opportunity for a hearing. Violations are as defined in individual governing documents and further defined in the policies. See #33 answer.

**a. What actions can the association take to collect these charges or fines?**

Associations can treat the charges and fines as assessments per CCIOA and lien, collect or foreclose to collect.

**b. Can my association foreclosure on my property for non-payment of these charges or fines?**

Yes as they are treated as assessments and subject to foreclosure.

**Question 39: What, if any, other internal administrative enforcement options can the association take in the event of a violation of the state statute, association's governing documents, or the rules and regulations of the association?**

Internal administrative options can include suspension of use of common elements should the Declaration so provide, suspension of ability to vote in Association elections should the governing documents so provide. (Note: others???)

**Question 40: Does any applicable statute regulate the flying of the American Flag?**

Yes, §38-33.3-106.5 of CCIOA provides that:

(1)(a) The display of the American flag on a unit owner's property, in a window of the unit, or on a balcony adjoining the unit if the American flag is displayed in a manner consistent with the federal flag code, PUB.L. 94-344; 90 stat. 810; 4 U.S.C. secs. 4 to 10. The association may adopt reasonable rules regarding the placement and manner of display of the American flag. The association rules may regulate the location and size of flags and flagpoles, but shall not prohibit the instillation of a flag or flagpole.

(b) The display of a service flag bearing a star denoting the service of the owner or occupant of the unit, or of a member of the owner's or occupant's immediate family, in the active or reserve military service of the United States during a time of war or armed conflict, on the inside of a window or door of the unit. The association may adopt reasonable rules regarding the size and manner of display of service flags; except that the maximum dimensions allowed shall be not less than nine inches by sixteen inches.

**Question 41: Does any applicable statute regulate solar panels? Clothes lines?**

Yes, section § 38-30-168 allows for solar panels but allows Associations to make aesthetic requirements so long as there is no significant extra cost and no significant decrease in energy. Additionally section § 38-33.3.106.7 of CCIOA allows for retractable clotheslines.

**Question 42: What are the rules regarding placement of satellite dishes or antennas on my property?**

There are no state statutes that apply to the placement of satellite dishes on properties. These are regulated by the Over the Air Reception Service (OTARD) rules established by the FCC.

**Question 43: What dispute resolution options do I have if I have a problem with the board?**

C.R.S. 38-33.3-209.5 requires associations adopt a procedure for addressing disputes arising between the association and unit owners but there is no requirement that any specific alternative dispute resolution be used.

**Question 44: What is the State law regarding recalling board members?**

Same answer as to 34 above.

**Question 45: Does state statute provide for the amendment of the association's documents?**

Yes. With respect to the declaration, §38-33.3-217(1)(a)(I) of CCIOA places a cap on how high the percentage of the votes allocated to the association may be required to amend an association's declaration. An association's declaration may provide that it may be amended by the affirmative vote of any percentage that is more than 50% of the votes allocated to the association, but that percentage may NOT exceed 67%.

With respect to the bylaws, Colorado law allows the bylaws to be amended by the Board or the Membership, subject to the following requirements:

For post-CCIOA communities §38-33.3-303(3)(a) of CCIOA prohibits the board from determining the qualifications, powers and duties, or terms of office of executive board members.

For both post and pre-CCIOA communities, §7-130-20(1) of the Non Profit Act prohibits the Board from amending the bylaws if a particular bylaw expressly prohibits the board from doing so, or if it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class. Further §7-130-202 prohibits the Board from amending the bylaws to change quorum requirements.

With respect to the articles of incorporation, unless the articles of incorporation provide otherwise, the Board may amend the articles unilaterally for certain purposes and other must have the approval of the amendments per §7-130-103 of the Non Profit Act.

**a. What percentage of the owners must approve?**

See above with respect to declaration approval requirements.

With respect to bylaws, this is document specific. If silent, assuming a quorum is present, a required membership meeting (in person or by proxy), and then the bylaw amendment is approved if the votes cast in favor of the amendment exceed the votes opposed to the amendment.

With respect to articles, this is document specific. If silent, then the Board may amend the articles unilaterally for certain purposes identified under §7-130-102 (1) (a) through (e) and (2). Other than amendment for the foregoing provisions, the membership must approve amendments. Assuming a quorum is present at such membership meeting (in person or by proxy), and then the articles amendment is approved if the votes cast in favor of the amendment exceed the votes opposed to the amendment.

**b. Is percentage based on those voting or totality of the number of owners?**

This is document specific for bylaws and articles of incorporation. For declaration amendments, the statutory cap discussed above provides for approval based on the totality of the number of owners, rather than those voting.

**c. Is the vote taken at a meeting or is it required to be by written consent?**

This is document specific.

If the articles or bylaws are silent, action must be taken at either a membership meeting pursuant to §7-130-103 of CCIOA or by mail pursuant to §7-127-109 of the Non Profit Act.

If the declaration is silent, §38-33.3-217(1) of CCIOA allows approval to be by “affirmative vote”, which may be taken at either a Membership meeting or by mail, or by “agreement of unit owners”, which would include written consent.

**d. Is mortgagee approval required? Is there a statutory process for obtaining mortgagee approval or providing for a presumptive mortgagee approval?**

The requirement for mortgagee approval is document specific.

With respect to a statutory process for obtaining mortgagee approval, if a declaration requires mortgagee approval, then §38-33.3-217(1)(b)(I) of CCIOA provides that the association can obtain such approval by following certain notice requirements. Once an association meets these notice requirements, a first mortgagee that does not give a negative response to the association within sixty days after the notice date will be considered to have assented.

The mortgagee notification provision provided for in this section is not mandatory and an association may use any other procedure set forth in its declaration.

If, on the other hand, mortgagee approval is required for amendments to the bylaws or articles of incorporation, then the association must follow the procedures/requirements as stated in the bylaws or articles of incorporation. The statutory process under C.R.S. 38-33.3-217(1)(b)(I) does not apply.

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