

## **AMENDMENTS TO CCIOA**

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# **THE COLORADO COMMON INTEREST OWNERSHIP ACT**

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This article reviews amendments made to The Colorado Common Interest Ownership Act (CCIOA). An amendment made in one year has often been revised subsequently. To determine the governing law, consult with one of our attorneys or review the statute as amended.

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## AMENDMENTS TO CCIOA

### ----- THE COLORADO COMMON INTEREST OWNERSHIP ACT

CCIOA was initially passed in 1991, effective July 1, 1992. The Colorado Common Interest Ownership Act (CCIOA), effective July 1, 1992, was approved by the legislature and signed by the Governor in 1991. The bill was HB 91-1292.

Amendments to CCIOA. Since the original bill from 1991, the following amendments have been made:

- 1) SB 92-100. In 1992, the legislature added to Section 306 of CCIOA (entitled "Bylaws") through SB 92-100. This amendment became effective July 1, 1993 and was the legislature's means of having the boards of owner associations regulate community managers.
  - a) Special Requirements on Associations with 30 or More Units that Delegate Certain Powers. SB 92-100 imposed special requirements on associations with 30 or more units that delegate certain powers. The special requirements are:
    - i) Persons handling money must maintain fidelity insurance or a bond in an amount of not less than \$50,000.00;
    - ii) All funds and accounts of the association must be kept separate from the funds and accounts of other associations;
    - iii) All reserve accounts of an association must be kept separate from operating accounts of the association; and
    - iv) An annual accounting for the association's funds and a financial statement must be prepared and presented to the association by the managing agent, a public accountant or a CPA.
- 2) HB 92-1359. In 1992, the legislature corrected an inconsistency in Section 204 ("Description of Units") in HB 92-1359.
- 3) HB 93-1070. In 1993, the legislature passed an amendment to CCIOA to fill in some gaps. HB 93-1070 became law on April 30, 1993. Highlights of changes from HB 93-1070 include the following:
  - a) Clarified that the limited lien priority for association assessments only applies to first deeds of trust executed after July 1, 1992;

- b) Deleted the prior language expressly allowing for attorney fees as a part of the super lien;
  - c) Deleted a 150% limitation on the super lien;
  - d) Specifically listed those sections of the law applicable to pre-CCIOA communities and more precisely delineated CCIOA's application to existing associations;
  - e) Expressly made unit owners personally liable for assessments;
  - f) Added definition for "horizontal boundary," "map," "plat" and "vertical boundary;"
  - g) Provided a description of the proportions upon which assessments are to be based for property tax valuation purposes;
  - h) Permitted a cooperative form of ownership to be either personal or real property;
  - i) Eliminated technical errors, inconsistencies in percentage requirements, and erroneous cross references;
  - j) Made new definitions applicable to prior condominium laws;
  - k) Extended unified taxation of units to newly created small cooperatives;
  - l) Clarified the process to elect or "opt in" to CCIOA for pre-CCIOA associations;
  - m) Clarified the process of recording declarations;
  - n) Clarified that CCIOA does not establish the exclusive method of legally describing a unit;
  - o) Eliminated the 10-year limit on the exercise of development rights by declarants;
  - p) Corrected math for termination of planned communities if not all the property is sold. Changed form of ownership among unit owners, upon termination of community, to tenancy in common, regardless of whether or not the entire project is comprised of units with horizontal boundaries;
  - q) Permitted taking advantage of development rights as a separate property right. Clarified intention to give associations a lien against development rights for development expenses paid by the association;
  - r) Allowed association control over whether to accelerate installment assessments in a foreclosure and cleared up the assessment status letter process; and
  - s) Conformed real property tax laws to CCIOA.
- 4) HB 93-1154. In 1993, the legislature added references to new corporate statutes through HB 93-1154. That bill affected Sections 306 and 319 of CCIOA.
- 5) SB 94-216. In 1994, the legislature passed an amendment to CCIOA to loosen requirements on large mixed use planned communities. SB 94-216 became effective on July 1, 1994. The changes contained in SB 94-216 did not significantly change CCIOA for most new developments. SB 94-216 exempted large mixed use planned communities from parts of CCIOA if:
- a) The development was started after July 1, 1992;
  - b) The development had at least 200 acres;
  - c) The development had zoning for at least 200 units; and

- d) The development had zoning for at least 20,000 square feet of commercial use.
- 6) SB 94-26. In 1994, the legislature passed a comprehensive re-enactment of laws regulating engineers and land surveyors. SB 94-26 revised references in CCIOA to other state statutes on land surveys and plats. This bill affected sections 103(22.5) and 209(2).
- 7) SB 95-198. In 1995, the legislature limited and revised the exemption given to declarants of large mixed use planned communities, established by SB 94-216. The most significant change was the increase of one of the qualifying factors for the exemption for a large mixed use planned community from 200 units to 500 units.
- 8) HB 95-1234. This bill, passed in 1995, is known as the “open meetings” bill. HB 95-1234 applies to meetings of all common interest communities which are held on or after July 1, 1995. The bill requires that, except under certain circumstances, all regular and special meetings of the association's board (including committees) must be open to attendance of all members of the association or their representatives. Meetings of the board or a committee may be closed to attendance by members (i.e. "executive session") for:
- a) Matters pertaining to employees or personnel of the association;
  - b) Consultation with legal counsel on disputes that are the subject of pending or imminent court proceedings;
  - c) Criminal investigative proceedings;
  - d) Compliance with other laws protecting matters from public disclosure; and
  - e) Discussion of any matter where disclosure would constitute an unwarranted invasion of individual privacy.
- 9) SB 96-186.
- a) This bill, passed in 1996, changed the statute of limitations for violations of building restrictions in common interest communities. The one-year period for enforcement changed, to begin when the person seeking enforcement knew or should have known of the violation. Architectural control committees and associations in common interest communities with covenants restricting exterior building improvements have one year from when they knew or should have known of a violation to seek enforcement. Prior law specified the one-year time frame ran or began from the date the building improvements were installed.
  - b) Senate Bill 96-186 also extended financial protections for associations in communities created after July 1, 1993. (See SB 92-100). These financial protections were due to expire on July 1, 1996, after having been imposed by the legislature in 1993. In 1993, the legislature decided these financial protections were the best way to regulate community association managers (versus licensing or registration). While these financial protections only apply to newer or non-

exempt post-CCIOA communities, all associations can benefit from these protections. The financial protections extended are as follows:

- i) Persons handling money of these associations must maintain fidelity insurance or a bond in an amount of not less than \$50,000.00;
  - ii) All funds and accounts of these associations must be kept separate from the funds and accounts of other associations;
  - iii) All reserve accounts of these associations must be kept separate from operating accounts of the association; and
  - iv) An annual accounting for the association's funds and a financial statement must be prepared and presented to the association by the managing agent, a public accountant or a CPA.
- 10) SB 97-002. This bill, passed in 1997, amended references to statutes governing plats and the platting process.
- 11) SB 97-91. This bill, passed in 1997, amended references in CCIOA to the "Colorado Revised Nonprofit Corporation Act."
- 12) HB 97-1237. This bill, passed in 1997, amended references to the "Colorado Uniform Partnership Act (1997)."
- 13) SB 97-151. This bill, passed in 1997, allowed for discretionary mediation of disputes between owner associations and owners.
- 14) HB 98-1337. This bill, passed in 1998, took effect July 1, 1998, and provided for the following:
- a) Certain basic CCIOA provisions were preserved and cannot be waived or varied by agreement;
  - b) A member right to an agenda was added [Section 15 of this Bill, Section 308 of CCIOA];
  - c) Declarations which are to expire (i.e. are subject to a term of years limitation) are allowed to be extended [Section 3 of this Bill, Section 120.5 of CCIOA];
  - d) Extraordinary assessments (retail sales assessments, service assessments and transfer assessments) are available to post-CCIOA associations [Section 5 of this Bill, Section 207(4)(a)(IV) of CCIOA];
  - e) Declaration amendments in new non-exempt post-CCIOA residential communities are made easier (the minimum percentage of 67% drops to a majority) [Section 10 of this Bill, Section 217(1) of CCIOA];
  - f) Use Restriction amendments in new non-exempt post-CCIOA communities are made easier (the minimum percentage of 100% drops to 67%) [Section 10 of this Bill, formerly Section 217(4) of CCIOA, now Section 217(4.5) of CCIOA];

- g) Classes of member and class voting in new non-exempt post-CCIOA communities was clarified [Section 5 of this Bill, Section 207(4)(a)(III) and 207(4)(d) of CCIOA];
- h) Amendments to create declarant rights, increase the number of units, change boundaries or change allocated interests in new non-exempt post-CCIOA communities was made easier (the minimum percentage of 100% drops to 67%) [Section 10 of this Bill, Section 217(4) of CCIOA];
- i) Amendment rights to correct errors in new non-exempt post-CCIOA communities were added [Section 4 of this Bill, Section 205(4) of CCIOA];
- j) Amendment rights to comply with secondary mortgage market requirements for new non-exempt post-CCIOA communities were added [Section 4 of this Bill, Section 205(5) of CCIOA];
- k) Declarant use of sales facilities and models in new non-exempt post-CCIOA communities was clarified [Section 9 of this Bill, Section 215 of CCIOA];
- l) The exemption of new non-exempt post-CCIOA planned communities with 10 or fewer units was increased to an exemption available if there are no more than 20 units. [Section 2 of this Bill, Section 116(1) and 116(2) of CCIOA];
- m) The exemption of a new non-exempt post-CCIOA "limited expense planned community" with an average annual expense assessment of \$300.00 was increased to \$400.00, subject to a CPI adjustment each subsequent year [Section 2 of this Bill, Section 116(3) of CCIOA];
- n) The definition of master association was changed [Sections 1 and 11 of this Bill, Section 103(20) and 220 of CCIOA];
- o) The description of development rights and the property to which those rights relate was clarified [Section 4 of this Bill, Section 205(1)(h) of CCIOA];
- p) The use of the terms "plat" and "map" was clarified [Section 6 of this Bill, Section 209 of CCIOA];
- q) The exercise of development rights was clarified [Section 7 of this Bill, Section 210(2) of CCIOA];
- r) The exercise of CCIOA's right to subdivide units was clarified [Section 8 of this Bill, Section 213 of CCIOA];
- s) The addition of unspecified real estate was clarified [Section 12 of this Bill, Section 222 of CCIOA];
- t) New non-exempt post-CCIOA owner associations can be formed as a limited liability company [Sections 13 and 19 of this Bill, Sections 301 and 316(1) of CCIOA];
- u) Upkeep of property within common interest communities was clarified [Section 14 of this Bill, Section 307 of CCIOA];
- v) Maintaining a quorum at meetings of the executive board was clarified [Section 16 of this Bill, Section 309 of CCIOA];
- w) Conveyance or encumbrance of the common elements in condominium and planned communities was made easier (the minimum percentage of 80%, for communities of less than 1, 000 units, drops to 67%) [Section 17 of this Bill, Section 312(1) of CCIOA];

- x) Conveyance or encumbrance of the common elements in cooperatives was made easier (the minimum percentage of 80% drops to 67%) [Section 17 of this Bill, Section 312(2) of CCIOA];
  - y) Agreements relating to and the actual grant, conveyance or encumbrance of common elements were made easier [Section 17 of this Bill, Section 312(3) of CCIOA]; and
  - z) Rebuilding after a fire or other casualty loss in new non-exempt post-CCIOA communities was made easier (the percentage of 80% drops to 67%) [Section 18 of this Bill, Section 313 of CCIOA].
- 15) SB 99-221. This statute was passed in 1999 and became effective May 19, 1999. SB 99-221 allows Colorado District Courts a special restricted ability to amend declarations by court order, subject to notice and hearing procedures.
- 16) HB 01-1166. This statute was passed in 2001 and became effective August 9, 2001.
- a) A part of this bill amended CCIOA and requires disclosures, by an owners association created after July 1, 1992, to members before the owners association can sue for construction defects.
  - b) The disclosure must be made to the members before a defect lawsuit is filed and must describe the lawsuit of the association, the remedy sought and the expenses and fees anticipated to be incurred by the association in the lawsuit.
  - c) Other parts of the bill modified the law governing residential construction defects. [Section 303.5 of CCIOA].
- 17) HB 02-1191. In the 2002 legislative session, HB 02-1191 was approved. HB 02-1191:
- a) Resolved some conflicting provisions in CCIOA (on declaration amendment allowed through court petition and on conveyance of common elements in a condominium community);
  - b) Created more budget flexibility for communities that are subject to the budget provisions of CCIOA;
  - c) Clarified transition of control of developer controlled associations in post-CCIOA communities;
  - d) Broadened subjects that can be reviewed in closed or executive session of the board to include:
    - i) the managing agent's contract; and
    - ii) written or oral communication from legal counsel.
- 18) SB 05-100. In the 2005 legislative session, major changes to CCIOA were made in SB 05-100. SB 05-100:

- a) General Governance Requirements as of January 1, 2006:
- i) Associations subject to CCIOA must adopt and maintain at least the following written policies and procedures:
    - (1) Investment of reserve funds policy;
    - (2) Enforcement policy and procedures, including a fine schedule;
    - (3) Collections policy and procedures;
    - (4) Handling board member conflicts of interest;
    - (5) Conduct of owner and board meetings;
    - (6) Examination, inspection and copying of association records; and
    - (7) Adoption and amendment of policies, procedures and rules procedure [209.5];
  - ii) Associations subject to CCIOA must follow SB 100's meeting notice and owner participation requirements:
    - (1) Physically post notice of owner meeting in conspicuous location, if at all feasible, in addition to any notice provisions contained in bylaws and any electronic notice the association chooses or is required to give;
    - (2) If association has electronic means, email notice of meetings to all owners who request such notification and provide association with email address;
    - (3) Allow owners to speak at owner meetings; and
    - (4) Allow owners to speak at board meetings before board takes a vote on issue under consideration, subject to reasonable regulations on such owner participation [310].
  - iii) Associations subject to CCIOA must make all decisions concerning approval or denial of unit owner's application for architectural or landscaping changes in accordance with standards and procedures in the declaration, rules and regulations or bylaws. [302(3)(b)]
  - iv) Associations subject to CCIOA must keep the following as permanent records:
    - (1) Minutes of all owner and board meetings;
    - (2) Record of all actions taken by owners or the board by written ballot or consent in lieu of meeting;
    - (3) Record of all actions taken by committee of the board on behalf of the association; and

- (4) Record of all waivers of notices of owner, board and committee meetings [317(1)(b)].
- v) Associations non-exempt post-CCIOA must keep the following as records available for owner copying and inspection at principal office:
  - (1) Articles of Incorporation;
  - (2) Bylaws;
  - (3) Resolutions adopted by the board that affect owners;
  - (4) Minutes of owner meetings and actions taken by owners without meeting for the past three years;
  - (5) All written communications within the past three years to owners;
  - (6) A list of the names and business or home addresses of current board members;
  - (7) Most recent annual report, if any; and
  - (8) All financial audits or reviews conducted pursuant to 303(4)(b) during the preceding three years [317(5)(a)-(j)].
- vi) Associations non-exempt post-CCIOA may charge unit owners the "actual cost" for copying records [317(2)];
- vii) Associations subject to CCIOA must have an audit or review at least once every two years using generally accepted auditing standards. If an association chooses an audit, it must be done by a CPA. An association must have an audit if:
  - (1) The association has annual revenues or expenditures of at least \$250,000; AND
  - (2) One-third of owners request an audit.
- viii) Associations subject to CCIOA must use secret ballots for the election of board members and for any other issue being voted on at the request of at least one owner. [310.5]
- ix) In Associations subject to CCIOA, any board member with a conflict of interest must disclose that conflict in an open meeting. Then, an association may allow that board member to participate in the discussion, but the board member with a conflict may not vote on the issue. [310.5]
- b) Required Association Disclosures as of January 1, 2006:
  - i) Basic Annual Disclosure. For associations subject to CCIOA, the association must annually provide to its owners a written notice that states:

- (1) The association's name;
  - (2) The name of any designated agent or management company, if any;
  - (3) The physical address and telephone number for the association and any designated agent or management company;
  - (4) The name of the common interest community;
  - (5) The initial date of the recording of the declaration;
  - (6) The declaration's reception number or book and page where the declaration is located [209.4(1)]; and
- ii) Extended Annual Disclosures. For associations subject to CCIOA, the association must compile and disclose the following through one of the four allowable means within 90 days after assuming control from the declarant and within 90 days after the end of each fiscal year commencing January 1, 2006 and for each year after that:
- (1) The date the association's fiscal year begins;
  - (2) The association's operating budget for the current fiscal year;
  - (3) A list – organized by unit type – of the association's current regular and special assessments;
  - (4) The association's annual financial statements – including any money held in reserve for the fiscal year immediately preceding the current annual disclosure;
  - (5) The results of any financial audit or review for the fiscal year preceding the current annual disclosure;
  - (6) A list of all association insurance policies, including, but not limited to, property, general liability, association director and officer professional liability and fidelity policies;
  - (7) The insurance company names, policy limits, policy deductibles, additional named insureds and expiration dates of all policies listed;
  - (8) The association's bylaws, articles and rules and regulations;
  - (9) The board meeting and member meeting minutes for the preceding fiscal year; and
  - (10) The association's seven responsible governance policies and procedures [209.4]
- iii) Means of Making Extended Annual Disclosures. For associations subject to CCIOA, the association may make the above disclosures in one of four ways:
- (1) Posting the information on a website with notice of the web address sent either by first class mail or email to all owners;

- (2) Maintaining a literature table or binder at the association's principal place of business;
  - (3) Mailing the information to all owners; or
  - (4) Personally delivering the information to all owners. [209.4]
- iv) Change of Agent / Address Disclosures. For associations subject to CCIOA, the association must provide all owners with an amended written notice within 90 days if the association's address, designated agent or management company changes. [209.4(1)]
- c) Board Member and Owner Education. For associations subject to CCIOA, the association must:
  - i) An association's board of directors may reimburse board members for the actual and necessary expenses incurred in attending educational classes and seminars specific to Colorado and applicable sections of CCIOA. [209.6]
  - ii) An association must provide education to their owners at least once a year and at no individual cost to unit owners. This owner education must relate to the general operations of the association and the rights and responsibilities of owners, the association, and its board members. An association's board has the discretion to determine how to comply with this provision. [209.7]
- d) Restrictions on Declarations, Covenants and Bylaws as of June 6, 2005. For associations subject to CCIOA, the following restrictions on the association and the community apply:
  - i) An association may not enforce a restrictive covenant that restricts or limits xeriscaping or requires the primary use of turf grass [37-60-126];
  - ii) An association may not bring enforcement actions against owners who allow their grass to die during water use restrictions and must give owners a reasonable and practicable time to revive dead grass before requiring them to re-sod. [37-60-126(11)(a)];
  - iii) An association must allow the display of the American flag on a unit owner's property, window, or balcony, subject to reasonable regulations on size and location as long as those regulations do not prohibit the installation of a flag or flagpole [106.5(1)(a)];
  - iv) An association must allow the display of political signs on a unit owner's property or window at least 45 days before and 7 days after an election,

subject to regulations no more restrictive than applicable local ordinances. If no ordinances apply, an association may not prohibit the display of at least one political sign per political office or ballot issue with maximum dimensions not less than 36 X 48 inches per sign [106.5(1)(c)];

- v) An association may not prohibit the parking of an emergency vehicle on its streets, the unit owners' driveway, or its guest parking spaces when the vehicle is required by an owner's employment and 1) the employer is an emergency service provider; 2) the vehicle weights 10,000 lbs or less; 3) the vehicle has an official emblem; and 4) parking the vehicle does not block emergency access or interfere with other owners' use of association streets and driveways [106.5(e)];
  - vi) An association must allow unit owners to clear vegetation following a written defensible space plan [106.5(e)];
  - vii) An association must allow unit owners to replace flammable roofing materials with inflammable roofing materials, subject to reasonable regulations on color, appearance and material [106.5(e)]; and
  - viii) The percentage of affirmative votes needed to amend an association's declaration may be no higher than 67% with any higher percentage to be deemed to be read as 67% [217].
- 19) HB 05-1337. This bill, passed in 2005, corrected references to subsections in 38-33.3-308(3) and (5) of CCIOA.
- 20) HB 05-1192. This bill, passed in 2005, requires a common interest community that is terminating (pursuant to authority and owner approvals as set forth in 38-33.3-218) to notify appropriate local government.
- 21) SB 06-89. This bill, passed in 2006, was the "clean up" bill to SB 05-100. It clarified and revised several sections of SB 05-100 and added a new governance policy to be adopted by January 1, 2007. Because of the overlap between SB 05-100 and SB 06-89, and the changes made in SB 06-89, the resulting changes of both bills is reviewed in the composite summary below.
- a) Composite Summary of SB 05-100, as modified by SB 06-89.
    - i) Eight Required Policies and Procedures of Owner Associations. In addition to the 7 policies required under SB 05-100, associations subject to CCIOA must have a governance policy on disputes between the association and owners and between owners and the association.

- ii) Association Disclosures. For associations subject to CCIOA, the following disclosures must be made:
- (1) Basic Disclosures. Associations must make certain disclosures (name of the association; name, address and telephone of the association and its agent or manager, if any; name of the community; initial date of recording of the declaration and recording information for the declaration), at no charge to homeowners, within 90 days after transition. In addition, if the association's address, designated agent or management company changes, the association must make updated information available within 90 days after the change.
  - (2) Annual/Extended Disclosures. Detailed disclosures of SB 05-100, including the required policy on disputes between the association and unit owners (effective January 1, 2006), are required annually.
  - (3) Audit and/or Review Disclosures as a Part of the Extended Disclosures. Disclosure of audits or reviews previously required (within 90 days of fiscal year end) is made more flexible to allow and require disclosure of the most recently available audit or review.
- iii) Association Financials. For associations subject to CCIOA, the following apply:
- (1) Accurate and Complete Standard vs. GAAP. Accurate and complete accounting records are to be kept. The requirement to follow or use generally accepted accounting or auditing standards, tax basis of accounting or a cash basis of accounting was eliminated in SB 06-89.
  - (2) Discretion of the Board. Audits or reviews (reviews were required once every two years by SB 05-100) are allowed at the discretion of the board.
  - (3) Audits and Reviews requested by 1/3 of the Owners. An audit is required if the association has annual revenues or expenditures of at least \$250,000 and an audit is requested by owners of 1/3 of units. A "review" is required if requested by owners of 1/3 of the units in the association.
  - (4) Qualifications of Financial Experts. Qualifications are established for persons performing financial reviews. The qualifications

include at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study.

- (5) Basis of Accounting for Reviews and Audits. If a review or audit is performed, then generally accepted accounting principles or auditing standards, tax basis of accounting or a cash basis of accounting are be used.
- (iv) Secret Ballots for Elections to the Boards Required for Contested Elections. For associations subject to CCIOA, the following apply:
- (1) Secret ballots for Contested Elections. No longer must all board member elections be held by secret ballot. Only contested elections are required to be by secret ballot.
- (2) Exemption to Boards Elected by Delegates. Boards elected by delegates are not required to be elected by secret ballot.
- (3) Secret Ballot on Action Items at Member Meetings. Any motion or vote at a member meeting is no longer required to be by secret ballot, if one owner requests a secret ballot. With the adoption of SB 06-89, secret balloting on member votes (other than the election of directors) is not required unless 20% of the members present at the meeting, in person or by proxy, provided a quorum is present, ask for a secret ballot.
- (v) Ballot Counting/Member Meetings. With the adoption of SB 06-89, the choices for associations subject to CCIOA for ballot counting are either (1) a neutral third party, or (2) committee of volunteers, exclusive of board members and in the case of contested elections, exclusive of board member candidates.
- vi) Owner Rights to Participate at Board Meetings. For associations subject to CCIOA, owners continue to have the right to speak at board meetings before the board takes formal action on any item under discussion, and conflicting provisions that appeared to require approval from a majority of the board have been eliminated. If more than one person desires to speak, and there are opposing views, the board is to allow a reasonable number of persons to speak on each side of the issue.
- vii) Notice Requirements for Member Meetings/Posting. If feasible, an association subject to CCIOA MUST physically post the notice of any unit owner meeting—annual or special—and also post the notice on its website

or sending out an email to all unit owners. SB 06-89 clarified that this posting requirement only applies to member meetings and does not apply to board meetings.

viii) Declaration Amendments. The following apply to associations subject to CCIOA:

- (1) Technical Changes. Clarification and technical amendments have been made to provisions of CCIOA regarding declaration amendments.
- (2) Limitations on the Application of the 67% Amendment Standard of SB 05-100. The 67% level of owner approval (as authorized by SB05-100) for declaration amendments does not apply to:
  - (a) amendments reserved to and executed by the declarant;
  - (b) certain amendments reserved to and executed by the association;
  - (c) amendments made by the District Court (pursuant to the court sanctioned petition process authorized in 1999);
  - (d) amendments within “phased communities” (now a defined term in the statute) or declarant controlled communities;
  - (e) amendments within a community where one owner owns more than 67% of the community; and
  - (f) amendments that change declarant rights increase the number of units, change boundaries (declarant votes are to be excluded).
- (3) The 67% Standard and Court-Sanctioned Amendments through the Petition Process. The 67% maximum limit for declaration amendments (from SB 05-100) does not preclude an association from seeking court-sanctioned approval of a proposed amendment (as allowed in 1999 under SB 99-221) based on the higher standards the declaration may contain.
- (4) Clarification to Declarations that Renew and the 67% Standard. Declarations with a specific term of existence (i.e., for 20 years), which also provide for automatic renewal or amendment, are allowed to be amended under the procedures set forth in CCIOA (67%, court-sanctioned petition, etc.).
- (5) Mailing and Publication Process to Facilitate Mortgagee Approvals. The mailing and publication process to obtain

mortgagee approval of a proposed declaration amendment has been clarified and is not mandatory.

- ix) Insurance Claims by Owners on Association Policies. The following apply to associations subject to CCIOA:
- (1) Owner Claims Allowed, but Subject to Conditions. A unit owner may continue to file a claim against an association's insurance policy, as if the unit owner were an additional named insured, but only after conditions added by SB 06-89 have been met.
  - (2) The Conditions. The conditions added include:
    - (a) The unit owner has contacted the board or the manager, in writing, and in compliance with any association guidelines or policies and procedures on owner-initiated insurance claims;
    - (b) The unit owner has given the association at least 15 days to respond to the unit owner;
    - (c) If requested, the unit owner has allowed the association's agent a reasonable opportunity to inspect the claimed damage; and
    - (d) The subject of the claim falls with the association's insurance responsibilities.
  - (3) Premiums and Request for Clarification of Coverage. Association insurers are not to take into account, when determining premiums to be paid for insurance policies, any request of an owner for a clarification of coverage.
- x) Membership List Restrictions. Member use of membership lists in a subject to CCIOA was restricted. Lists may only be used for purposes related to a unit owner's interest as a unit owner. Commercial use of these lists is also prohibited. These restrictions are viewed in the statute as "privacy" restrictions, and cannot be superseded by conflicting provisions in the governing documents.
- xi) Association Records. The following apply to associations subject to CCIOA:
- (1) Fees. Fees for copies of records of the association may be required in advance.

- (2) Availability. Records requested must be available in 5 days or at the next regularly scheduled meeting (as long as the meeting is within 30 days of the request).
- xii) Conflict of Interest Transactions of Board Members with the Association. The following apply to associations subject to CCIOA:
- (1) Permissive Nature of These Transactions, as Allowed Under the Nonprofit Corporation Act Returns. Board members are allowed to have a conflict of interest in any action or contract that would financially benefit any board member or party related to a board member, if the requirements of the Nonprofit Corporation Act are complied with.
  - (2) Voidable vs. Void. Under SB 05-100, if the association entered into a contract or other transaction, in which a director had a conflict that was not properly disclosed, the transaction was void. Under SB 06-89, if the association enters into a contract or other transaction in which a director has a conflicting interest, the transaction will not be void or set aside if:
    - (a) The director's interest is disclosed and a majority of the disinterested directors approve or ratify the transaction; or
    - (b) The conflicting interest is disclosed and a majority of the members approve or ratify the transaction; or
    - (c) The transaction is fair to the association.

Therefore, as long as a transaction is fair to the association, it will not be set aside, even if the director fails to disclose the conflict or votes on the transaction.

- xiii) Standard of Care for Directors Investing Reserve Funds. Directors and officers in associations subject to CCIOA must meet the standards of care outlined in the Colorado Revised Nonprofit Code when investing association reserve funds. The standards require directors and officers to act:
- (1) In good faith;
  - (2) With the care an ordinarily prudent person in a like situation would exercise under similar circumstances; and
  - (3) In a manner the director or officer reasonably believes to be in the best interest of the association.

In discharging their duties, directors and officers may rely on other people on matters that the directors or officers reasonably believe are within that person's professional or expert competence. SB 06-89 includes managers within the definition of officers for purposes of this section.

- xiv) Attorney Fees for Enforcement In Associations Subject to CCIOA. Attorney fees for enforcement of the governing documents, or for enforcement of the terms of CCIOA, are to be awarded to the prevailing party in any civil action (lawsuit), without express consideration of claims, defenses, counterclaims, third party claims, etc. and including only lawsuits.
- xv) Seller Disclosure of Common Interest Community Required. In associations subject to CCIOA, the following apply:
- (1) New CREC form to be prepared by January 1, 2007. A new disclosure, effective January 1, 2007, is required by sellers to buyers in common interest communities in purchase contracts of the Colorado Real Estate Commission (CREC). The form of disclosure must be substantially similar to a disclosure included in the statute, must be in bold-faced type and must be similar to the disclosure currently required as to special districts in CREC forms. This disclosure does not apply to sale of time shares.
  - (2) Seller Disclosure to Buyer. A special disclosure required to be given by a seller to a buyer in SB 05-100 (a disclosure statement outlining the buyer's responsibilities and obligations as a member of the association) was repealed. Upon the buyer's request, the seller must provide copies of the governing documents and financial documents, as listed or required in the most recent form of CREC contracts. This disclosure does not apply to sale of time shares.
  - (3) Limitation on Damage Claims of Buyers. Damage claims of buyers, for a seller's failure to disclose the above, are limited.
  - (4) Association's Role in the Seller's Disclosures to a Buyer. The seller is also to provide to the buyer, or authorize the association to provide to the buyer, upon payment of the association's fee, various documents for the association and the community pursuant to the most recent form of contract of the Colorado Real Estate Commission.

- (5) Buyer Acknowledgment No Longer Required. Buyers are no longer required to sign a statement outlining the buyer's responsibilities and obligations as a member of the association, and sellers are no longer liable to buyers for all damages and court costs caused by the failure of the buyer to provide the seller with that acknowledgment.
- xvi) Restrictions on Enforcement of Certain Covenants. In associations and communities subject to CCIOA, the following apply:
- (1) U.S. Flag Displays. SB 05-100 provisions allowing for owner flag displays were extended to occupants.
- (2) Service Star and Service Flag Displays. SB 05-100 provisions allowing for service stars and service flags displays were extended to occupants.
- (3) Political Signs Allowed.
- (a) Associations may not prohibit the display of political signs within the boundaries of a unit by an owner or resident or occupant or in the windows of a unit from 45 days before an election to 7 days after the election.
- (b) Size of signs may be regulated, to the littlest of the maximum allowed local government or 36" X 48".
- (4) Emergency Vehicles and Parking. Associations may not prohibit the parking of an emergency motor vehicle by occupants on a street or driveway, or guest parking area, provided that parking the vehicle can be accomplished without obstructing emergency access or reasonable needs of other owners or occupants to use streets, driveways and guest parking spaces. Emergency vehicles are allowed if the unit owner or occupant is required by his or her employer, if a primary provider of emergency fire, law enforcement, ambulance or emergency medical services, to have the vehicle at his or her residence during designated times and other requirements are met.
- (5) Cedar shake shingles may not be required. An association may not require the use of cedar shakes or other flammable roofing materials. The following provisions of SB 05-100 on cedar shake roofing were repealed:

- (a) Associations could not prohibit a unit owner from replacing cedar shakes or any other flammable roofing materials with nonflammable materials;
  - (b) Declarations or bylaws could specify reasonable standards for the color, appearance and general type of nonflammable roofing materials that may be used; and
  - (c) Governing documents could not require the use of nonflammable materials that would exceed the cost of replacing the flammable materials for which they are being substituted.
- xvii) Applicability of SB 05-100 and SB 06-89. The applications of the recent changes to CCIOA, in SB 05-100 and SB 06-89, are clarified in SB 06-89.
- 22) HB 07-1362. This bill, passed in 2007, clarified development rights reserved under CCIOA and specifies that information need not appear in the form of a label on a plat or map in order to be considered a legally binding identification of parcels that are subject to specific rights or obligations.

The bill also gives effect to certain information contained in the declaration, a map or plat, or some combination of any two or all of the three documents.
- 23) HB 08-1270. This bill, passed in 2008, allows owners in Planned Communities, not exempt from CCIOA, to utilize energy generating devices and to take energy efficiency measures.
  - a) State Statutes Changed by this Legislation. This legislation has a part wholly within CCIOA (on energy efficiency) and has the other part in general real estate statutes, Title 38, Article 30 (as to renewable energy generation devices). Under a section of the bill the new law on renewable energy generation devices is also brought within CCIOA.
  - b) Application of the Energy Efficiency and Renewable Energy Generation Devices of this Statute.
    - i) Planned Communities. These parts of the statute apply to all planned communities subject to CCIOA (the so called pre-CCIOA communities and also the post-CCIOA communities that are not exempt from CCIOA). For example, the statutory protections will apply in communities where the footprint of the structure is the lot line and property outside the building footprint is either a general or limited common element. The statute will be effective only as to those measures that involve the

structure and not property (general or limited common elements) outside the building structure.

- ii) Condominiums. This statute has no impact on condominium communities.
- c) Application of Just the Renewable Energy Generation Devices Provisions of the Statute (and not the Energy Efficiency Provisions). In addition to the application to Planned Communities subject to CCIOA, above, the provisions on energy generation devices apply to ‘any covenant, restriction, or condition in a deed, contract, security instrument, or other instrument.’
- d) Effective Date. The statute became effective August 6, 2008.
- e) So, what is the new law?
  - i) More Owner Rights. Owners in the properties that this new statute applies to have more rights to generate and save energy.
  - ii) Absolute Prohibitions are Void and Unenforceable. Under this bill, restrictions, covenants and guidelines that effectively preclude the use of renewable energy generation devices and/or energy efficiency devices are void and unenforceable. Despite restrictive covenants to the contrary, owners can install *solar energy or wind-electric energy generating devices*, subject to factors, reviewed below.
  - iii) What Prohibitions are enforceable? Reasonable limitations are enforceable. Specifically, five factors must be considered:
    - (1) Documents/Aesthetic Provisions. Whether the rights of owners to generate solar or wind energy are subject to reasonable architectural controls – in a Declaration of a Planned Community OR in any covenant, restriction, or condition in a deed, contract, security instrument, or other instrument. Aesthetic provisions that impose reasonable restrictions are permitted on:
      - Dimensions
      - Placement or
      - External appearance
    - (2) Reasonable Cost. The cost to the owners is not significantly increased.

- (3) No Decreased Performance or Efficiency.
  - (4) Bona fide Safety Factors.
  - (5) Sound – as to wind generators - may be reasonably regulated.
  - iv) Specific Energy Saving Devices Items Allowed For. A list of specific energy saving devices items is allowed for in the bill, subject to the factors above. The items that are given this elevated status are as follows:
    - i. Awnings
    - ii. Shutters
    - iii. Trellises
    - iv. Ramadas
    - v. Other shade structures marketed for the purpose of reducing energy consumption.
    - vi. Garage or attic fans and associated vents or louvers.
    - vii. Evaporative coolers.
    - viii. Energy efficient outdoor lighting devices.
    - ix. Retractable clotheslines.
  - v) Areas Where These Devices CANNOT be Placed. This statute does not allow an owner in the properties that this new statute applies to placement of renewable energy devices or energy efficiency measures on:
    - i. Property owned by someone else.  
Leased property (except with permission of the lessor).
    - (3) Collateral for a commercial loan, without the consent of the lender.
    - (4) General or limited common elements of a condominium or of a Planned
    - (5) Community (assuming the Planned Community is subject to CCIOA).
  - f) Recommended Actions to Owners and Owners Associations That Have Architectural Covenants. Owners and owner associations with architectural covenants in the properties that this new statute applies to should consider reviewing and revising architectural guidelines and/or their covenants, to be consistent with this statute, if the votes or action for those revisions can be obtained.
- 24) HB 08-1135.
- a) Summary. This bill, passed in 2008, made three changes to CCIOA:

- i) Due process is required before an association can fine.
- ii) Disabled Persons have enforcement rights within State law.
- iii) Mediation is preferred by the State to resolve covenant enforcement issues.

b) Additional Due Process.

- i) HB 08-1135 requires associations to follow specific due process before fining an owner. This bill, signed into law by the Governor, and effective July 1, 2008, requires the following:
  - (1) Associations must adopt and follow a written policy on fines (many association already have these policies in their ‘enforcement’ policies, adopted under SB 05-100 and SB 06-89. (Check with an attorney at our firm to be sure your association is already in compliance.)
  - (2) The Association’s policy must include a ‘fair and impartial fact finding process’ (For example, did the violation occur? If so, should the owner be held responsible? Is the proposed fine consistent with the fining schedule?)
  - (3) The fair and impartial fact finding process may be informal.
  - (4) Notice and opportunity to be heard must be guaranteed in the policy.
  - (5) The hearing must be by an ‘impartial decision maker’ (persons with authority to make a decision on a claimed covenant, rule or architectural violation, and without a direct personal or financial interest in outcome of the hearing. What does “no direct personal or financial interest in outcome” mean? By the terms of HB 08-1135, the persons making the decision must not receive any greater benefit or detriment than any other member.)

c) Disabled Persons Enforcement Rights.

Under federal law, disabled persons are entitled to make reasonable modifications to their unit or to the common elements so that they can have “full use and enjoyment of their unit.” HB 08-1135 created a state right for this same purpose under CCIOA, effective July 3, 2008.

d) Mediation.

The State has also again expressed its interest, stressing the availability of the Statewide Office of Dispute Resolution, within the Colorado Judicial Branch and their website. This preference is stated in HB 08-1135, effective July 1, 2008.

- 25) HB 08-1365. This bill, passed in 2008, allows bundling of multiple association foreclosures in timeshare communities. Including more than one owner and/or more than one timeshare in a timeshare association's foreclosure lawsuit is permitted under HB 08-1365.
- 26) HB 08-1356. This bill creates a warranty of habitability in every rental agreement for a residential premises. The bill also prohibits a residential landlord or tenant who prevails in a forcible entry and detainer action from recovering attorney fees, unless the residential rental agreement contains a provision for either party to obtain attorney fees, and also creates a warranty of habitability in every rental agreement for residential premises.
- 27) HB 09-1220. This bill, adopted in 2009, effective August 5, 2009, allows for "affordable housing sales price restrictions and rental rates despite restrictions in governing documents. This prohibition on restriction for affordable housing only applies to counties with a population of less than 100,000 that have a ski area in the county.
- 28) SB 09-249. This bill passed in 2009, extended the limitations on enforcement of certain covenants [U.S. flags, service star/service flags, political signs, emergency vehicles and parking, cedar shake shingles not being required, energy generating and energy savings devices reasonably allowed and affordable housing allowed (in certain counties)] to:
- a) Post-CCIOA small and limited expense communities;
  - b) Post-CCIOA small cooperatives;
  - c) Pre-CCIOA small planned communities; and
  - d) Pre-CCIOA small cooperatives.
- 29) HB 09-1359. This bill, passed in 2009, did three things:
- a) New Required Policy on Reserve Studies/Funding. The bill adds a ninth policy to the list of policies associations are required to have. The bill does not require an association to have a reserve study done, and does not require reserve studies to be done on a periodic basis (i.e., once every 3 years). The policy to be adopted is to identify the following:
    - i) when the association plans to have a reserve study;
    - ii) whether the study is based on a physical analysis and a financial analysis
    - iii) whether there is a funding plan; and

- iv) any projected sources of funding.

Associations in Pre-CCIOA communities must adopt their policy by July 1, 2010.

Post-CCIOA communities that are not exempt from CCIOA must adopt their policy by August 5, 2009.

- b) **Required Sharing of Information by Board Members.** The bill also requires board members to share information with each other. The information to be shared is “related to the responsibilities and operation of the association obtained by any other member of the board.”
  - c) **Committee Chair Required to Meet Qualifications of Board Members.** The bill also requires committee chairs, appointed after August 15, 2009, to meet the same qualifications as are applicable to board members. Some associations have a requirement that board members be owners. Any requirement or qualifications of that character will apply to Committee Chairs, appointed after August 15, 2009.
- 30) HB 10-1278. Passed in 2010, this bill created the state “HOA Information and Resource Center.” The office is for three groups within Colorado common interest communities: owners, associations and declarants. The office is part of the Division of Real Estate. Much of this bill amended or added to statutes other than CCIOA. As to CCIOA, this bill added a part 4 of CCIOA, titled “registration.” With this bill, CCIOA includes 4 parts:

Part 1 – General Provisions

Part 2 – Creation, Alternation and Termination of Common Interest Communities

Part 3 – Management of the Common Interest Community

Part 4 -- Registration

- a) Three Elements of the Bill. This legislation became effective January 1, 2011. The bill requires all owner associations that are organized under Section 38-33.3-301 of the Colorado Common Interest Ownership Act to:
  - i) register
  - ii) pay a registration fee
  - iii) report annually to the State
- b) 5 Responsibilities of the HOA Information Officer and Office:
  - i) to act as a clearinghouse for information concerning the basic rights and duties of owners, declarants and owner associations in common interest communities
  - ii) to track inquiries and complaints

- iii) to establish an annual registration and report process for all owner associations organized under Section 38-33.3-301 of the Colorado Common Interest Ownership Act to register and provide basic information to the Division of Real Estate
  - iv) to collect annual registration fees from owner associations (those required to register)
  - v) to report annually to the Director of the Division of Real Estate regarding the number and types of inquiries and complaints received
- c) Clearinghouse – Responsibility of the HOA Information Officer and Office. The new state office serves as a clearinghouse of information and as a resource for:
- i) owners
  - ii) associations
  - iii) declarants
- d) Tracking of Inquiries and Complaints. The new state office is also to receive and track inquiries and complaints from:
- i) owners
  - ii) associations
  - iii) declarants
- e) Annual Owner Association Registration and Reporting. Annual registration and reports are to be made by certain owner associations to this new state office. The annual report is to include the following (all of which are also required to be annually disclosed by owner associations to their owners, as a part of SB05-100. The following are sometimes referred to as the ‘basic annual disclosures’ required under SB05-100:
- i) the name of the association
  - ii) the name of the association’s designated agent or management company, if any
  - iii) a valid physical address and telephone number for both the association and the designated agent or management company, if any
  - iv) the name of the common interest community
  - v) the initial date of recording of the declaration
  - vi) the reception number or book and page for the main document that constitutes the declaration

Additionally, the state may require other information as specified by the Director of the Division of Real Estate (number of properties in the community, etc.).

- f) Annual Registration Fees. Along with the registration and report to the state required of owner associations (see the above), owner associations are also required to pay a registration fee or tax. This fee or tax is mandated, by the terms of the bill, to cover all direct and indirect costs of operating the HOA Information and Resource Center.

The maximum annual fee is currently set at \$50.00 per year. Initial fee for registrations in 2010 was \$8.95. Associations with annual revenues of \$5,000 or less or that are not authorized to make assessments and have no revenue are exempt.

The annual fee is not dependent on the size of the community that an owner association governs and operates.

- g) Reporting by the New HOA Information and Resource Officer to the Division of Real Estate. The bill requires the HOA Information and Resource Officer to report annually to the Director of the Division of Real Estate. Currently, the bill specifies that this report must be on the number and type of inquiries and complaints received from owners, associations and declarants.

Yet, presumably, the HOA Information and Resource Officer will also report on the number of owner associations that annually register as well as the number of owner associations that this office expects do not register.

- h) Qualifications and Restrictions on the HOA Information and Resource Officer. The top state officer of this new office is to be appointed by the Executive Director of the Department of Regulatory Agencies.

The qualifications for the HOA Information Officer are:

- i) familiarity with CCIOA
  - ii) balanced, independent, unbiased
  - iii) no current financial ties to an HOA board, board member or managing agent
  - iv) must refrain from conduct or relationships that would create a conflict or appear to create a conflict of interest
  - v) may not have been licensed or registered with the Division of Real Estate for the past 10 years
- i) Repeal in 2020. The requirements of this new law, the office and officers all repeal, by its own terms, in 2020, unless extended.

- j) Enforcement of the New Law. The HOA Information and Resource Officer has no authority to enforce an association's documents under state law. The HOA Information and Resource Center will not be expected to intervene in or resolve complaints received by that office.
- k) Consequences to Associations that do not Register. If an association that is required to register fails to register, it may not enforce a lien for assessments and may not employ any other enforcement mechanisms to enforce covenants until the association is validly registered.

A lien for assessment filed when the association was validly registered or before registration was required is not extinguished by a lapse in the association's registration, but any pending enforcement proceedings related to the lien will be suspended and time limits tolled until the association is again validly registered.

- 31) HB 12-1237. Passed in 2012, this bill revised the 'Association Records' section of CCIOA, updating that section by completely amendment and restating the section.

a) Key Elements and Aspects

- The effective date of the bill is January 1, 2013
- The bill amends the Colorado Common Interest Ownership Act (CCIOA)
- The bill was promoted and lobbied by the CLAC because existing law on HOA records was not clear enough
- The bill addresses record keeping and inspection of records:
  - The bill makes clearer the law on HOA records
  - Proper purpose, as a condition of inspection or copying, is eliminated
  - Deliberations and votes (emails) for action taken outside a meeting must be kept and allowed to be inspected
  - Some records may be excluded
  - Reasonable charges (for labor and material) are allowed for copying
- The bill is based on recommendations of a commission on uniform state laws
- The bill responds to complaints to the HOA Information Office
- The bill responds to concerns of owners and legislators
- CLAC's envoy team was instrumental in advocating for HOA interests on this bill

b) Records Required to be Kept for Inspection

- Only records listed in the bill (and as set forth below) must be retained and provided to the members
- Records of all actions taken by board members outside of meetings:
  - emails, written communications and votes
- Governing documents (declaration, articles of incorporation, bylaws, rules and regulations and policies and procedures)
- Records as identified in the governing documents
- Contact information on board members
  - names
  - physical mailing addresses
  - email addresses
- Records that must be disclosed as required under SB 05-100 (from 2005) including:
  - basic disclosures
  - extended or annual disclosures
- Receipts and expenditures
- Records of claims and settlements of construction defects
- Minutes of member, board and committee meetings
- Resolutions of the board related to rights of classes of owners
- List of owners
  - with a physical mailing address
  - with a vote allocation (this requirement does not apply to timeshares)
- Financial statements for the past 3 years
- Tax returns for past 7 years
- Annual report as filed with the Colorado Secretary of State
- Assessment records for each unit to permit preparation of a statement of account
- Reserve study, if any
- Current written contracts
- Contracts over the past 2 years

- Architectural approvals and denials (drawings of professionals are not required to be released without the consent of the owner of the drawing)
- Ballots and proxies of owners (for one year)
- All general communications to unit owners (for the past 3 years)

c) Inspection and Copying

- Records maintained (above) are available for inspection and copying during normal business hours or the next regularly scheduled meeting of the board, on request with at least 10 days notice
- Proper purpose is no longer a condition that is enforceable
- A written request may be required
- The written request may be required to describe the record sought
- Copying charges may cover labor and material but may not exceed the estimated cost of production and copying

d) Uses of Membership Lists Remain Restricted

- No commercial use
- No sale to third parties
- No use unrelated to a unit owner's interest
- No solicitation of money use unless the money is to be used to solicit owner votes

e) Records that May be Withheld

- Architectural drawings, plans, etc. (consent of the owner of the plans may be required)
- Contracts, leases, bids or other records under negotiation
- Communications with legal counsel or otherwise protected communications
- Disclosures which would violate other law
- Records from or of that give rise to executive sessions
- Individual owner records (other than the owner's own records)

f) Records that Must be Withheld

- Personnel, salary or medical information of specific individuals
- Personal information on owners
- Personal identity information
- Bank account information
- Telephone numbers
- Email addresses

- Driver's license
- Social security numbers

g) Associations are not Obligated to Compile or Synthesize Records

b) Recommendations to HOAs and Managers on the New HOA Record Law (as of 1-1-13)

- Become familiar with the new HOA records law (HB 1237)
- Update the association's records inspection policy, consistent with the HOA records law
- Consider a policy on email communications (an optional vs. required policy)
- Consider association decisions (action) being taken only at meetings (vs. by email or chain)
- If email discussions are to continue, a record of those deliberations and votes must be kept
- Email addresses used by board members may open their personal and business email records to inspection and subpoena (in a lawsuit)
- Consider board member email addresses provided by management
- Consider board members only using the address provided for HOA decisions
- Consider posting all or some of the documents that can be inspected (other than contracts) on the association's website
- Consider a records retention policy (an optional vs. required policy)