



Governing Documents Revision Committee The Reserve on the Eagle River

Greetings, Fellow Homeowners,

Our evenings are cooling off considerably, the daylight hours are shorter and shorter, and the pool is soon closing. Our transition to another gorgeous autumn in Edwards is upon us. I love this time of year!

Speaking of transitions, here is our current update regarding the the progress of our very detailed and carefully considered Governing Document Revision project.

- Kerry Wallace, of Goodman Wallace, was contracted to oversee and prepare our revised Governing Documents.
- Kerry reviewed our existing documents for compliance with the State Statutes that make up the Colorado Common Interest Ownership Act (CCIOA).
- She found that we were missing one of the nine required Responsible Governance Policies, a Reserve Spending Policy. A Reserve Spending Policy has now been adopted by your Board of Directors, after a Homeowner review process was completed. Slight revisions were made to our Collections, Enforcement, and Records Policies.
- Your Board of Directors is currently seeking bids to contract with a Reserve Specialist to assist in elaborating on our Reserve Spending Plan (CIP). The Reserve Spending Plan is a fundamental budgeting tool with a long scope and sequence that will make our Reserve Spending Policy specific, useful, and communicable. This is noted in these August Meeting Minutes.
- Homeowners contributed to a master “wish list” for governance at The Reserve and this list was passed on to Kerry Wallace, to consider as she drafts our revised documents.
- Kerry is currently preparing a first draft of our revised Declaration document. Please recall from our last information submission that after Colorado State Statutes, the Declaration is the document at the top of the hierarchy for HOA Governance. All other governing documents must align with our Declaration. We care a lot about our declaration because this document defines whom is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration.

A concurrent question that we must address as an association, in conjunction with revising our governing documents, is the MAJOR question about voting to opt in as a POST July 1, 1992 CCIOA Community. We are currently considered a PRE-CCIOA Community. The Articles of Incorporation for The Reserve on the Eagle River were filed on June 1, 1981 with the Colorado Secretary of State. Our Declaration was recorded in Eagle County on February 11, 1982. Our governing documents have not been revised, comprehensively, for 29 years. Just think how things have changed!

Please indulge me in sharing my personal thought process as I have tried to learn as much as possible about HOA governing documents since May of this year when Kerry Wallace was contracted and I became the Governing Documents Revision Committee chairperson. I assume that many, if not most of us association members, are in the same boat. We enjoy our lives with family and friends. We work. In the exceptionally beautiful, active environment where we have chosen to live, we play. And so, I am assuming that we have not sat down to discuss or evaluate the 72 pages of the Colorado Common Interest Ownership Act (CCIOA), nor the 55 page Colorado Revised Nonprofit Code, not even our own collection of Governing Documents for The Reserve on the Eagle River.

In a sincere attempt to be helpful, here are a few questions that I sought answers to on my quest to determine how I might vote when the question of becoming a POST CCIOA Community would, inevitably, be presented. Please understand that by sharing my questions and their answers I am not attempting to sway your vote. **I sincerely believe that the best decisions are made for a diverse community when the Roberts Rules of Order philosophy is followed which honors One Person – One Vote.**

The process of seeking answers to my questions has given me confidence that voting to adopt FULL CCIOA provides the most guidance, fair governance, protections, and due process for HOA's and Homeowners. This adoption also opens up opportunities to fulfill some of the wishes on our wish list. I believe that all volunteer Directors on HOA Boards have their perceived best interests of their communities at heart and that differing perspectives and honest discussion lead to overall good governance.

Please, let's make this a discussion. Send me your questions, concerns and opinions. I will always seek answers and respond. Please attend our next Board meeting on September 21, 2015 at 6:30 at the clubhouse and add your voice to the discussion.

With Respect,
Deb Forsline
deb@thereserveontheeagleriver.com

Feel free to stop reading here, if you detest long, text laden newsletters. Continue reading, if you are curious about the answers to questions I asked in pursuit of understanding.

And so, I wondered:

Question 1. Why would a Pre-CCIOA community willingly choose to be accountable to ALL of the CCIOA state statutes, instead of only SOME of them when we are already accountable for the very important 9 Responsible Governance Policies? (Legislation failed in a close vote last year to add a 10th mandatory policy regarding budget. This will be revised and most like pass on the next attempt.)

Answers from Kerry Wallace:

- "The problem is that it is very complicated to determine which sections of CCIOA do apply and many pre-existing communities consequently misapply CCIOA leading to liability and governance issues."
- "The application of section C.R.S. 38-33.3-117 (2014) of CCIOA to your community is not simple or easy to ascertain. In order to make any decision regarding governance you would be required to determine if any of the referenced sections of CCIOA apply as opposed to just knowing if the entire Act applies. I have had experienced attorneys make mistakes by incorrectly applying or not applying CCIOA to pre-existing communities.
Note: In tiny text at the end of this letter I have included the Colorado Revised Statute C.R.S. 38-33.3-117 (2014) which demonstrates this complexity. The text is tiny because I don't expect it be read, just noted.
- "CCIOA provides a very helpful statutory regime that assists the Association in its management obligations"
- "CCIOA is a statute adopted to assist Common Interest Communities with governance. I believe that CCIOA does help in that regard. The statute actually limits and defines the scope of authority of an Association as opposed to expanding it. Owners should prefer to have CCIOA in place as opposed to not. Gray areas when it comes to common interest communities are not helpful. CCIOA has been in place since 1992 – it is not new and reflects modern governance issues."
- "Please understand that CCIOA is not a Rule – it is a Statute adopted by the Colorado Legislature. CCIOA requires ALL communities – even pre-existing ones – to adopt certain Rules. They are called the 9 Responsible Governance Policies. Do not confuse these CCIOA required Rules with the entire statute. The Reserve must have in place updated versions of the Responsible Governance Policies. I provided drafts of the policies that required updating or adoption. The adoption of the statute itself will not change the mandatory legal requirement to adopt and have in place the 9 Responsible Policies."

Question 2. Are the powers of the Board limited or expanded under Post-CCIOA?

CCIOA CORNER - BOARD POWERS

Section 302 of CCIOA provides associations with a list of powers that may be used even if such powers are not spelled out in the associations' declarations. If your community is **post-CCIOA** (created after July 1, 1992) your board may take advantage of all the powers spelled out in Section 302 unless the governing documents specifically prohibit your association from exercising such powers.

On the other hand, if your community is **pre-CCIOA** (created prior to July 1, 1992) you are not entitled to take advantage of some of these powers unless your governing documents specifically authorize such powers.

Below is a list of powers set forth in Section 302 that may be utilized by both pre and post-CCIOA communities as long as the governing documents do not prohibit such actions:

Authority to adopt rules;
Authority to collect assessments;
Right to hire managing agents;
Right to become involved in litigation;
Right to enter into contracts;
Authority to regulate use, maintenance, and modification of common elements;
Right to impose fees for use of common elements;
Right to impose late charges for delinquent assessments and to recover attorney fees if collection action is initiated against delinquent owners;
Right to impose charges for preparation and recording of declaration amendments or statements of unpaid assessments; and
Authority to indemnify directors and officers;

In addition to the above, below is a list of powers that may be additionally utilized only by post-CCIOA communities:

Authority to construct improvements on common elements;
The rights to acquire, hold, encumber, or transfer personal property of the association;
Authority to grant easements or licenses over common elements;

So next time you're wondering whether your association has authority to take a particular action, don't forget to review the above list in addition to your governing documents.

Author

Elina B. Gilbert, HindmanSanchez

Note: There has been past controversy regarding development of our adjoining property. This allows all options to be available for member consideration. Also, the ability to build garages was the number one request we received when we were compiling our "wish list".

An example from Melissa M. Garcia, partner at HindmanSanchez:

"One of the CCIOA provisions that is applicable to post-CCIOA associations, but not pre-CCIOA association, is relevant when it comes to amending the Bylaws.

- If you're a post-CCIOA association and your Bylaws do not expressly prohibit the Board from amending the Bylaws unilaterally, then your Board can amend the Bylaws without Owner approval EXCEPT FOR: (i) quorum, (ii) powers and duties of the board, or (iii) terms and qualifications of directors.
- If you're a pre-CCIOA association and your Bylaws do not expressly prohibit the Board from amending the Bylaws unilaterally, then your Board can amend the Bylaws without Owner approval EXCEPT FOR quorum.

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? Why would we adopt all of this governance when there is no monitoring or accountability?

Answer from Kerry Wallace and HindmanSanchez:

- 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, Common Interest Communities are required to register with the state.

This answer still frustrates me. With no oversight and no authority, are we all really just on our own? It appears, however, that new legislation is on the horizon that will increase the role and authority of the Information and Resource Center. Time will tell.

COLORADO REVISED STATUTES

* This document reflects changes current through all laws passed at the Second Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2014) and changes approved by the electorate at the November 2014 election *

TITLE 38. PROPERTY - REAL AND PERSONAL
REAL PROPERTY
ARTICLE 33.3. COLORADO COMMON INTEREST OWNERSHIP ACT
PART 1. GENERAL PROVISIONS

GO TO COLORADO STATUTES ARCHIVE DIRECTORY

C.R.S. 38-33.3-117 (2014)

38-33.3-117. Applicability to preexisting common interest communities

(1) Except as provided in section 38-33.3-119, the following sections apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after July 1, 1992:

- (a) 38-33.3-101 and 38-33.3-102;
- (b) 38-33.3-103, to the extent necessary in construing any of the other sections of this article;
- (c) 38-33.3-104 to 38-33.3-111;
- (d) 38-33.3-114;
- (e) 38-33.3-118;
- (f) 38-33.3-120;
- (g) 38-33.3-122 and 38-33.3-123;
- (h) 38-33.3-203 and 38-33.3-217 (7);
- (i) 38-33.3-302 (1) (a) to (1) (f), (1) (j) to (1) (m), and (1) (o) to (1) (q);
- (i.5) 38-33.3-221.5;
- (i.7) 38-33.3-303 (1) (b) and (3) (b);
- (j) 38-33.3-311;
- (k) 38-33.3-316;
- (k.5) 38-33.3-316.3; and
- (l) 38-33.3-317, as it existed prior to January 1, 2006, 38-33.3-318, and 38-33.3-319.

(1.5) Except as provided in section 38-33.3-119, the following sections apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after January 1, 2006:

- (a) (Deleted by amendment, L. 2006, p. 1217, § 3, effective May 26, 2006.)
- (b) 38-33.3-124;
- (c) 38-33.3-209.4 to 38-33.3-209.7;
- (d) 38-33.3-217 (1);
- (e) (Deleted by amendment, L. 2006, p. 1217, § 3, effective May 26, 2006.)
- (f) 38-33.3-301;
- (g) 38-33.3-302 (3) and (4);
- (h) 38-33.3-303 (1) (b), (3) (b), and (4) (b);
- (i) 38-33.3-308 (1), (2) (b), (2.5), and (4.5);
- (j) 38-33.3-310 (1) and (2);
- (k) 38-33.3-310.5;
- (l) 38-33.3-315 (7);
- (m) 38-33.3-317; and

(n) 38-33.3-401.

(1.7) Except as provided in section 38-33.3-119, section 38-33.3-209.5 (1) (b) (IX) shall apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after July 1, 2010.

(2) The sections specified in paragraphs (a) to (j) and (l) of subsection (1) of this section shall be applied and construed to establish a clear, comprehensive, and uniform framework for the operation and management of common interest communities within this state and to supplement the provisions of any declaration, bylaws, plat, or map in existence on June 30, 1992. Except for section 38-33.3-217 (7), in the event of specific conflicts between the provisions of the sections specified in paragraphs (a) to (j) and (l) of subsection (1) of this section, and express requirements or restrictions in a declaration, bylaws, a plat, or a map in existence on June 30, 1992, such requirements or restrictions in the declaration, bylaws, plat, or map shall control, but only to the extent necessary to avoid invalidation of the specific requirement or restriction in the declaration, bylaws, plat, or map. Sections 38-33.3-217 (7) and 38-33.3-316 shall be applied and construed as stated in such sections.

(3) Except as expressly provided for in this section, this article shall not apply to common interest communities created within this state before July 1, 1992.

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

HISTORY: Source: L. 91: Entire article added, p. 1711, § 1, effective July 1, 1992; entire section amended, p. 1928, § 64, effective July 1, 1992.L. 93: Entire section amended, p. 644, § 6, effective April 30.L. 95: (4) added, p. 889, § 2, effective July 1.L. 99: (1)(h) amended, p. 695, § 2, effective May 19.L. 2002: (2) amended, p. 767, § 1, effective August 7.L. 2005: (1)(g) and (1)(l) amended and (1)(i.5) and (1.5) added, p. 1375, § 3, 4, effective January 1, 2006.L. 2006: (1)(g), (1.5)(a), and (1.5)(e) amended, p. 1217, § 3, effective May 26.L. 2009: (1)(i.7) and (1.7) added and (1.5)(h) amended, (HB 09-1359), ch. 257, p. 1165, § 3, 4, effective August 5.L. 2013: IP(1.5), (1.5)(l), and (1.5)(m) amended and (1)(n) added, (HB 13-1134), ch. 198, p. 808, § 4, effective August 7; IP(1) amended and (1)(k.5) added, (HB 13-1276), ch. 351, p. 2038, § 4, effective January 1, 2014.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations
50 State Surveys - Common Interest Ownership

ANNOTATION

The presumption that statutes apply prospectively is overcome here because subsection (1) expressly provides for application to all common interest communities created before July 1, 1992. *Giguere v. SJS Family Enters.*, 155 P.3d 462 (Colo. App. 2006).

Although subsection (1) does not list several statutory sections as applying to common interest communities created before July 1, 1992, some sections not listed may be referenced to determine whether the statute permits the substantive result to be accomplished by an amendment because the sections listed in subsection (1) are limited to procedural issues. *Giguere v. SJS Family Enters.*, 155 P.3d 462 (Colo. App. 2006).