



SB 100/SB 89 ANALYSIS¹

SB05-100 Provisions

SB06-89 Provisions

Action Required
by Association

1	Mandates right to display American or military service flag on a unit owner's property 38-33.3-106.5(1)(a) 38-33.3-106.5(1)(b)	Extends right to display flag to occupants of unit	Revise policy if current policy limits display of flags to owners only
2	Mandates right of owners to display political signs (one per ballot issue or candidate) on unit owner's property or from window of unit up to 45 days before election and 7 days after 38-33.3-106.5(1)(c)	Clarifies that right to post signs is within boundaries of unit; permits limit on maximum size to lesser of local jurisdiction or 36 x 48 inches	May modify policy to implement clarifications
3	Allows owner of unit to park emergency vehicles, subject to certain limitations 38-33.3-106.5(1)(d)	Extends right to occupants	Revise policy if current policy limits right to owners
4	Association may not require replacement of roofing with cedar shake shingles or other nonflammable roofing, subject to certain criteria 38-33.3-106.5(1)(f)	Association may not require use of cedar shake shingles or other flammable roofing materials	Revise architectural or design guidelines as necessary
5	Encourages alternative dispute resolution 38-33.3-124	Requires association to adopt a policy effective January 1, 2007 for addressing disputes between association and owners	Adopt policy by January 1, 2007

¹This analysis is only a brief outline of the respective acts, and paraphrases for ease of reference. As with any legal analysis, it is critical to review the actual provisions of the statutes and apply the specific facts to determine legal outcome. Every part of a statute is important in its interpretation. Governing documents may further impact an interpretation of a statute. **Do not rely on this analysis to make decisions or take action without further consultation with the association's attorneys.**

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6	Annual disclosures required; wide latitude in how to provide disclosures - posting on internet web page with accompanying notice via 1st class mail or e-mail, literature table at association's principal place of business, mail or personal delivery 38-33.3-209.4	Association must make specified information available upon request, and in any event, within 90 days after a change of management company, or change of association address or agent, or upon assuming control from declarant	No change
7	Association must maintain accounting records using generally accepted accounting principles, and adopt responsible governance policies addressing (1) collection of unpaid assessments; (2) handling board member conflicts of interest; (3) conduct of meetings; (4) enforcement of covenants and rules including notice and hearing and imposition of fines; (5) inspection and copying of association records by owners; (6) investment of reserve funds; and (7) adoption and amendment of policies, procedures and rules 38-33.3-209.5	Eliminates requirement to keep accounting records using generally accepted accounting principles and allows association to use cash or tax basis of accounting (per 38-33.3-303(4)(b)) Must adopt mandatory dispute resolution policy	No action required See item 5 above
8	Allows association to pay for board member education relating to responsible governance of association 38-33.3-209.6		No action required
9	Requires association to provide, on an annual basis, education to owners concerning owners and association's rights and responsibilities		No action required
10	Allows amendment of declaration upon approval of 67% of owners, regardless of any larger amount specified in the declaration 38-33.3-217(1)(a)	Clarifies that association may still seek court authorized amendment	No action required
11	Allows for process to obtain mortgagee approval of amendments by certified mail 38-33.3-217(1)(b)	Clarifies that this section is not mandatory; excludes certain high percentage owners/associations from effect of lower percentage requirements	No action required

12	Mandates certain disclosures by a seller to a buyer 38-33.3-223	repealed	No action required
13	Mandates that decisions concerning approval or denial of architectural or design approval shall be in accordance with standards in declaration, rules and regulations or bylaws and shall not be arbitrary or capricious 38-33.3-302(3)(b)	No change	Adopt guidelines if not already done
14		Board bound by standard of conduct in Colorado Revised Nonprofit Corporation Act regarding investment of reserves 38-33.3-303(2.5)	Amend reserve fund investment policy if necessary
15	Provides owners (or their agents) a right to attend and speak at meetings of the Association and to speak at meetings of the Board before formal action is taken by the Board 38-33.3-308(2.5)	Clarifies right to speak	May need to revise Conduct of Meetings policy to be consistent with statutory revisions
16	Provides for voting for board members by secret ballot, and other issues by secret ballot if requested by any owner; requires counting of ballots by neutral third party; results of vote reported without reference to names, addresses or other identifying information 38-33.3-310(b)(I)	Clarifies that this section does not apply to associations whose board members are chosen by delegates; and only applies to contested positions on board, and other issues if requested by 20% of unit owners present in person or by proxy	May conflict with association Bylaws; if so, then an amendment to bring into compliance with statute may be appropriate
17	Board member with conflict of interest must disclose conflict at open meeting prior to discussion or action on that issue and may not vote on issue; contract entered into in violation of section is void and unenforceable 38-33.3-310.5	Section repealed and provisions of Colorado Revised Nonprofit Corporation Act adopted	Board Member Conflicts of Interest policy may be revised to relax its provisions and adopt the provisions of the Nonprofit Act (conflicts of interest are better defined; authority of board is better defined; and contracts entered into are not automatically void)

18	<p>Association must keep specified records and make them reasonably available to owners (provide owners with access to them and allow them to be copied upon 5 days advance notice) and payment of copying expenses not to exceed actual cost per page 38-33.3-317</p>	<p>Specifies that “reasonably available” permits the association to make records available at next Board meeting if occurring within 30 days after request; records may not be used for any purpose unrelated to an owner’s interest as an owner</p>	<p>May need to revise Records Inspection policy</p>
19	<p>Sellers required to disclose to Buyer in sale contract the existence of governing documents and property may be subject to architectural review and approval; Seller responsible for obtaining Buyer’s acknowledgment and deliver to association 38-35.7-102</p>	<p>Entire section repealed, and replacement disclosure requirements added that require every sale contract to disclose the existence of a common interest community and property is subject to governing documents that create financial obligations; failure to pay could lead to placement of a lien; changes may be prohibited without obtaining approval by an architectural review committee; at Buyer’s request, Seller must provide documents or authorize association to provide documents upon payment of copying costs</p>	<p>No action required</p>
20	<p>Permits owners to file claim against association’s insurance policy to same extent as if owner were an additional named insured 10-4-110.8</p>	<p>Establishes conditions before owner may file claim against association’s insurance policy: (1) owner has first contacted the board in accordance with any applicable association policies for owner-initiated claims; (2) association has 15 days to respond in writing and inspect damage; (3) the subject matter of claim falls within the association’s insurance responsibilities When determining amount of premium, association’s insurer cannot consider requests by owners for clarification of coverage</p>	<p>Adopt policy addressing how to handle insurance claims affecting owners’ units</p>