HindmanSanchez

FREQUENTLY ASKED QUESTIONS: CHANGES TO THE LAW BY SB 100 & SB 89

July 7, 2006

SB 100 & SB 89 IN GENERAL

1) When does SB 89 take effect?

The entire law took effect on the Governor's signature on May 26, 2006. However, the law allows associations until January 1, 2007 to adopt the new required procedure addressing disputes between owners and associations. In addition, residential real estate contracts need not contain the new required disclosure until January 1, 2007.

2) When did SB 100 take effect?

SB 100's provisions concerning xeriscaping, patriotic and political expression, parking of emergency vehicles, fire mitigation, and amendment of declarations took effect immediately on the signing of the bill, which was June 6, 2005. All other provisions took effect on January 1, 2006.

3) Do SB 100 and SB 89 apply to pre and post-CCIOA communities?

SB 100 and SB 89 apply to both pre and post-CCIOA common interest communities as defined by CCIOA except for the provision dealing with association insurance as well as some exemptions for time-share communities. In addition, developer-controlled associations are exempt from the requirement to make certain information available to homeowners 90 days after the end of each fiscal year per section 38-33.3-209.4(2).

4) Did SB 89 provide for any additional exemptions?

Yes. Communities in which one owner holds 67% or more of the votes are exempted from the 67% cap limiting the percentage of affirmative votes that may be required to amend an association declaration. In addition, amendments that affect declarant-controlled and phased communities are also exempted from this cap.

5) What happens if an association does not comply with SB 100 or SB 89's requirements?

There are no civil or criminal penalties for failing to comply with CCIOA, including the additions and amendments that SB 100 and SB 89 brought to the statute. However, homeowners can bring associations to court for violating any provision of CCIOA. In the event an association loses such a case, by failing to comply with CCIOA, section 38-33.3-123(1)(c) of CCIOA provides that the prevailing party in such an action *shall* be entitled to costs and reasonable attorneys fees incurred in bringing the action. These fees often run around $10,000 to $15,000. Associations, therefore, should be careful to comply with CCIOA as amended to avoid the potential of having to pay both its attorneys fees *and* that of the prevailing party owner.

GENERAL GOVERNANCE

Responsible Governance Policies and Procedures

1) What written policies and procedures must an association have?

SB 100 required that an association have written policies and procedures in place by January 1, 2006, regarding: 1) Collection of unpaid assessments; 2) Handling of board member conflicts of interest; 3) Conduct of meetings; 4) Enforcement of covenants and rules; 5) Owner inspection and copying of association records; 6) Investment of reserve funds; and 7) Adoption and amendment of policies, procedures, and rules.

SB 89 added a policy to this list. By January 1, 2007, associations must adopt a policy containing the procedure for addressing disputes between owners and associations.

2) How comprehensive must these written policies and procedures be?

SB 100 and SB 89 do not specify how comprehensive the policies and procedures must be. However, the intent behind this requirement is to have policies and procedures in place so that owners can understand how their association operates and the possible consequences of their actions. The more comprehensive a policy or procedure, the more likely this goal will be achieved.

Notice of Unit Owner Meetings and Owner Participation in Association Meetings

1) What are the notice requirements for owner meetings?

In addition to giving notice of meetings as specified in its bylaws, an association must physically post the notice of any owner meeting – annual or special – in a conspicuous place, if at all feasible and practicable. This physical posting of the

meeting notice must be done in addition to any electronic notice that the association chooses or is required to give as discussed below.

2) What types of places would be considered conspicuous?

Examples of conspicuous places where physical notice of meetings can be posted to comply with this section are stairways, mail kiosks (if not owned by the United States Postal Service), elevators, court yards, bulletin boards, and community centers.

3) My community is made up of single family detached homes. The way our community is structured leaves it without any place to post a meeting notice. How can we comply with SB 100 conspicuous notice requirement?

The law requires the physical posting of a notice only if it's feasible and practicable. If there *really* is no place for a notice to be posted within your community, your association is not out of compliance with the law for its inability to physically post a notice of its upcoming owners meeting.

4) Does this requirement to post notice apply to board member meetings too?

No. This notice requirement applies only to unit owner meetings.

5) Several homeowners have requested that they receive meeting notices via their email. Does my association have to comply with these requests?

Your association must comply with these requests only if it "has the ability to give electronic notice." SB 100 does not define what the ability to give electronic notice means, but a reasonable interpretation is that such ability is present if your association has its own email address. If your association has the ability to give electronic notice, it must provide electronic notice to an owner who requests it and provides the association with his or her e-mail address.

6) May boards have regulations regarding owner participation at board meetings?

Yes. Boards may regulate owner participation by providing time limitations on speaking or restricting the number of people who may speak. Boards must, however, allow for a reasonable number of people to speak to each side of an issue if there is group of people who wish to speak.

7) Must a board distribute to the owners copies of all the materials that the board has?

No. The board has no duty to distribute documents it might be considering to the owners.

8) May a board still go into an executive session?

Yes. The new laws do not affect a board's ability to go into executive session.

9) Does the law give owners the right to speak before the board takes any formal action during an executive session?

SB 100 does not specifically exempt executive sessions from its provision that provides for owners to speak before the board takes any formal action. However, the intent of the executive session provision is to allow boards to deliberate and vote on items without the presence of owners under the narrow circumstances defined in 38-33.3-308(3). Therefore, it is our opinion that a board does not need to allow owners to speak before taking formal action during executive sessions.

10) Does a renter qualify as a designated agent of the owner for attending and participating in meetings?

Yes. If an owner designates his or renter as the owner's representative in writing, the renter has same rights (attendance, participation) as an owner at the board meeting, and as well as voting rights through a valid proxy at an owners' meeting (unless the governing documents require proxies to be given to owners only.)

Standards for Approval or Denial of Unit Owners' Architectural or Landscaping Applications

1) My association has written architectural and landscaping standards, but they are not located in my association's declaration or its rules and regulations or its bylaws. Is that okay?

No. The law requires an association's architectural and landscaping standards to be in the association's declaration, its rules and regulations, or its bylaws.

Amendment of Declaration – Allowable Percentage of Required Affirmative Votes and First Mortgagee Notification

1) How does SB 100 change the provisions contained in an association's declaration that provides the procedure for amending the declaration?

The law now states that an association's declaration may not require the affirmative vote from owners of any percentage higher than 67% to amend. Any percentage higher than that will be deemed to specify a percentage of 67%.

2) Does this 67% apply to all associations?

SB 89 exempts amendments affecting declarant controlled communities and phased communities. (A phased community is defined as "a common interest community in which the declarant retains development rights.) In addition, communities in which one owner holds 67% or more of the community's votes are exempted from the 67% cap.

3) My association's declaration states that it may be amended only by an affirmative vote of 80%. Do we need to amend our declaration to comply with the 67% cap?

No. Any percentage higher than 67% will be deemed to read 67% unless the community falls into one of the exemptions discussed above. If your association would like a percentage lower than 67% (but higher than 50%), it will need to amend its declaration. However, in amending the declaration, your association now will only need an affirmative vote of 67%, not 80%.

4) Does this affect the court petitioning process that an association may use to amend its declaration?

No. This change does not affect the court petitioning process.

5) Does SB 100 affect how an association can get the affirmative assent of first mortgagees when an association's documents require such assent to amend the declaration?

Yes. Rather then having to get an affirmative answer from a first mortgagee, an association can deem that the first mortgagee assented if it: 1) sends a dated, written notice with a copy of the proposed amendment by certified mail to each mortgagee at its most recent address as shown on the recorded deed of trust or its recorded assignment; AND 2) has the dated notice printed in full with information on how to obtain a copy of the proposed amendment – on separate occasions at least one week apart – in a newspaper located in the county in which the association is located. If a first mortgagee does not give a negative response within 60 days, it will be considered to have assented.

6) Must an association use the first mortgagee notification procedure discussed above?

No. SB 89 explicitly states that associations *may* use this procedure and assent acquired through another manner will be deemed sufficient if any other requirements set out in the declaration are followed.

7) If an association mails certified letters to the most recent address on the recorded deed or recorded assignment, but the first mortgagee has changed location without notification, has the association met its notification requirements?

Yes.

8) My association's declaration requires 100% first mortgagee approval for amendments to the declaration. Does SB 100 change this?

No. SB 100 does not alter the percentage of first mortgagee approval needed to amend an association's declaration.

Association Records – Retention & Owner Inspection:

1) What must an association keep as permanent records?

An association must keep the following as permanent records: 1) minutes of all board and owner meetings; 2) all actions taken by the board or owners by written ballot or written consent instead of holding a meeting; 3) all actions taken by a committee on the behalf of the board instead of the board acting on behalf of the association; and 4) all waivers of the notice requirements for owner meetings, board member meetings, or committee meetings.

2) What other records must an association keep?

An association must keep a copy of the following records at its principal office: 1) articles of incorporation; 2) the declaration; 3) the covenants; 4) its bylaws; 5) board resolutions affecting owners; 6) minutes of all owner meetings and records of any actions taken by owners without a meeting in the past three years; 7) all written communications to owners generally as unit owners within the past three years; 8) a list of the names and the business or home addresses of the current board and its officers; 9) its most recent annual report, if any; and 10) all financial audits or reviews required by section 38-33.3-303(4)(b) conducted in the last three years.

3) May associations charge for copying these records for owners?

Yes. An association may charge its 'actual costs' in advance for copying association records for owners, including the actual costs incurred in copying or printing out

the documents required to be disclosed annually by section 209.4 (discussed on page 9), if the disclosure is made by assembling a binder or posting documents on a website.

4) What is an association's actual cost?

An association's actual cost is a reasonable fee that may include personnel and equipment used for the search, retrieval, and copying of the records. Actual cost does not take in account the time spent watching the owner inspect the records.

5) Can an owner demand to inspect and copy the records for any reason?

No. An association must allow an owner to inspect and copy records when an owner's request to do so is made in good faith and for a proper purpose and has not been made solely to be frivolous or vexatious. The owner's purpose should also be association-related. For example, requests for names and addresses to market private commercial enterprise are not appropriate, but an owner's request for names and addresses to send out information on an association initiative is appropriate.

6) Does SB 89 address owner requests to inspect and copy membership lists?

Yes. Membership lists may not be acquired for a purpose not relating to the owner's interest as a unit owner without the consent of the board. Such purposes include, but are not limited to, any commercial purpose, soliciting money or property, or selling or purchasing the list.

7) What types of records may an association withhold from a unit owner?

Any records protected by the attorney-client privilege or under law (such as credit reports), as well as anything included in the association's confidentiality policy.

6) Does a renter qualify as a designated agent of the owner for inspecting records?

Yes, an owner can chose to elect his or her renter as an "agent of owner."

Association Audit or Review

1) What are an association's audit or review requirements?

An association must have an audit if it has annual expenditures or revenues of $250,000 or higher and 1/3 of the owners request that one be performed. An association must have a review if requested by 1/3 of its owners.

2) Who may perform the audit or review?

An audit must be performed by a certified public accountant. A review must be performed by an individual who has a basic understanding of accounting due to prior business experience, education above the high school level, or bona fide home study.

3) What is the difference between an audit and a review?

An audit represents a certified public accountant's professional affirmative guarantee that the association is financially healthy and that all its financial records are in order. A review is a more qualified assessment of an association's financial health. As opposed to the affirmative guarantee of an audit, a review is a statement that the reviewer did not find any financial problems during the more limited analysis of the association's records.

Use of Ballots and Proxies

1) Must associations use secret ballots for all board member elections?

SB 100 required that votes for the election of board members be taken by secret ballot. SB 89 modified this requirement, requiring secret ballots for all *contested* elections. In addition, secret ballots must be used for uncontested elections and other votes that owners have the right to participate in at the request of 20% of owners present in person or represented by proxy.

2) Who may count the ballots?

These ballots must be counted by either a neutral third party or a committee of volunteers selected fairly who are not board members and in the case of a contested election, not candidates.

3) We often only have two candidates for two positions. Can we use the parliamentary procedure of acclamation instead of secret ballots?

Yes, unless a secret ballot is requested by 20% of the owners at the meeting represented in person or by proxy.

4) To prevent fraud and for vote verification purposes, may an association "code" the ballots so that the voter's identity can be determined in the case of disputed election results?

No. If using a secret ballot, no information may be included on it that would ever allow the voter's identity to be determined or how that individual voted.

5) **May an association still allow homeowners to give directed proxies for board member elections if using a secret ballot?**

Yes, if the association uses a method that allows the proxy to be verified without identifying the voter. For example, the actual ballot or proxy can be place in a sealed envelope that is placed in another envelope that has the owner's name and address on the front of it. In this way, the board can check that person off and verify his or her eligibility to vote. After this is done, the envelope with the ballot or proxy can be removed and added to the pile.

Board of Directors' Conflicts of Interest

1) **What is the law regarding board members' conflicts of interest?**

CCIOA's board member conflict of interest section refers to the Colorado Revised Nonprofit Act's conflict of interest section. This section allows board members to vote after disclosing the conflict to the remaining board members.

2) **My association's governing documents require a board member with a conflict of interest to leave the room during any discussion or vote on the issue from which the conflict arises. Is this allowed?**

Yes. Your association's governing documents may define a board member conflict of interest more stringently and place more restrictions on conflicted board members with conflicts of interest than state law.

3) **I think some of our board members have some confusion as to what constitutes a conflict of interest. Should my association draw up a list of such transactions?**

Yes. It would be helpful to have a list of what would be considered a conflict of interest in your association's required Board Member Conflict of Interest Policy. Be sure to specify that the provided examples are not all inclusive.

REQUIRED DISCLOSURES

General Association Disclosures

1) **What are an association's disclosure requirements?**

Associations must make two kinds of disclosures to all its unit owners.

First, an association, within 90 days after assuming control from the declarant, must make the following information available on reasonable notice: 1) the association's name; 2) the name of any designated agent or management company

for the association; 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; and 6) the declaration's reception number or book and page where the declaration is located. If an association's address, designated agent, or management company changes, the association must make updated information available within 90 days of the change.

Second, an 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 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 the most recent available financial audit or review; 6) a list of all association insurance policies, including property, general liability, association director and officer professional liability, and fidelity policies; 7) the association's bylaws, articles, rules and regulations; 8) the board meeting and member meeting minutes for the preceding fiscal year; and 9) the association's responsible governance policies.

2) How may an association make the disclosures necessary 90 days after assuming control from the declarant and within 90 days after the end of each fiscal year after that?

Associations have four ways to make the required disclosures: 1) posting the information on an internet web page with notice of the web address sent either by first-class mail or e-mail 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.

3) May an association charge for compiling and disclosing this information?

No. This annual disclosure is to be counted as a common expense liability.

4) If an association chooses to make its disclosure through the maintenance of a literature binder, may it charge owners for making copies of documents within that binder?

Yes. If after disclosing the documents via a literature binder, an association is asked by an owner to make copies, it may charge its actual costs for those copies. SB 100 requires associations to disclose this information, not to distribute it. (Actual costs are discussed on page 6.)

5) If an association chooses to make its disclosure by posting the documents on a website, may it charge owners for printing the documents off the website?

Yes. If after disclosing the documents by posting on a website, an association is asked by an owner to print the documents off the website, it may charge its actual costs for printing them out. (Actual costs are discussed on page 6.) An association may not, however, charge an owner a fee to download these documents.

6) What is the difference between an association's name and the name of its common interest community that must be annually disclosed by written notice?

Often, an association's name and the name of its common interest community will be the same. Sometimes, however, the name of the community, which is not an association's legal name, will differ from the name of the association, which is its legal name found on the association's articles of incorporation.

7) The statute requires associations to disclose annually the "results" of an audit or review. What does this mean?

SB 100 does not define what it means by "results." The best practice, and our recommendation, is to disclose the entire document as there is no reason that owners should not know this information. Disclosing the entire document allows for transparency, which was the legislature's intent.

Sale of Unit – Seller's Disclosure of Buyer's Responsibilities to Association and Requirement for Architectural Approval

1) What must a seller of a unit disclose to the buyer?

As of January 1, 2007, every contract for the sale of residential real property must contain the disclosure statement set forth in section 38-35.7-102(1) in the Colorado statutes. This disclosure statement essentially states that the property is located in a common interest community with mandatory membership and that the buyer will be subject to the community's documents, rules and regulations. It also sets out that the buyer is obligated to pay assessments and that failing to do so could result in foreclosure.

In addition, at the buyer's request, a seller of unit located in a common interest community must either provide - or authorize the association to provide - to the buyer all of the association's governing and financial documents listed in the most recent available version of the residential real estate sales contract promulgated by the Colorado Real Estate Commission.

2) What must an association do to assist the seller in fulfilling his or her disclosure requirements under SB 100?

If authorized by the seller, an association must provide to the buyer, on payment of its usual fee for providing association records, the documents listed in the Colorado Real Estate Commission's residential real estate sales contract.

3) Is an association liable if the seller fails to follow these disclosure requirements?

No. The seller has the obligation to provide the disclosure statement discussed above. In the event the seller fails to provide it, the buyer has a claim against the seller for actual damages directly and proximately caused by the failure plus court costs. The seller does have an affirmative defense if the buyer had actual or constructive knowledge of the facts and information required to be disclosed.

4) May an association charge for providing a seller with the requested documents?

Yes. An association may charge its usual fee for providing association documents under section 317 of CCIOA. Section 317 allows associations to charge, in advance, the "actual costs" per page for copies of association records. Actual costs is not defined, but a reasonable interpretation is that actual costs include the costs of labor and material.

BOARD MEMBER AND OWNER EDUCATION

1) What are an association's responsibilities to offer owner education?

An association is required to offer some type of education to its owners on an annual basis.

2) How can an association comply with the owner education requirement?

The offered education must be on a topic related to homeowner association operations or the respective rights, responsibilities, and duties of owners and board members with an association's board determining the criteria for compliance. Some ways an association may comply include offering presentations at the annual owners meeting, inserting educational articles into the association newsletter,

offering a class, having a new homeowner orientation program or posting information on its website.

3) Does an association have the responsibility to make owners attend the offered education?

No. An association must just offer the education and has no liability if owners choose not to attend or take advantage of the offerings.

RESTRICTIONS ON BYLAWS AND COVENANTS

Xeriscaping

1) What is xeriscaping and how can I get more information on it?

Trademarked by the Denver Water Board in 1981, xeriscaping is a type of environmentally friendly landscaping that conserves water by limiting lawn areas, irrigating efficiently, and using low water use plants. More information on xeriscaping can be found at the following organizations' websites: Denver Water [www.water.denver.co.gov], Xeriscape Colorado!, Inc. [www.xeriscape.org], and Plant*talk*, Colorado [http://www.ext.colostate.edu/ptlk/].

2) What does the law say about restrictive covenants that prohibit or limit a homeowner's ability to xeriscape?

The law declares that *any* restrictive covenant that prohibits or limits a homeowner's ability to xeriscape is unenforceable as against public policy, regardless of how long an association has had that covenant.

3) Does this mean that an association may not bring enforcement actions against homeowners who let their grass die?

No. Associations may still bring enforcement actions against owners who allow their grass to die *unless* water use restrictions are in effect. Once the water use restrictions are lifted, an association must give the owner a reasonable and practicable time to reseed and revive turf grass before being required to replace it with new sod.

4) An owner in my association has covered half his lot with gravel and has allowed weeds to take over the rest of his property. He is ignoring the association's requests that he comply with its landscaping requirements and insists that he has the right to "xeriscape" like this. Is he right?

No. Owners still must comply with landscaping requirements such as keeping their property free of weeds, as long as such requirements do not mandate that owners' landscaping consist "primarily" of turf grass. (Although the statute does not define "primarily," in our opinion a reasonable interpretation of "primarily" is any requirement for turf grass to cover 51% or more of an owner's property).

Additionally, the statute defines xeriscape as "the application of the principles of landscape planning and design, soil analysis and improvement, appropriate plant selection, limitation of turf area, use of mulches, irrigation efficiency, and appropriate maintenance that results in water use efficiency and water-saving practices." Covering your property with gravel or installing fake turf grass does not fit within this definition.

5) May an association still require owners to have some amount of sod?

An association may not limit an owner's "ability" to xeriscape or require landscaping to consist primarily of turf grass. We believe that if an association requires less than 50% of turf grass and allows an owner to xeriscape the rest, it is in compliance with this section of the statute.

6) My municipality's local code places restrictions on xeriscaping that are much more stringent than that allowed in SB 100. Is the local code now unenforceable?

No. The xeriscape provision of SB 100 addresses *only* an association's restrictive covenants, leaving municipalities free to govern xeriscaping as they see fit. Therefore, municipalities (not associations) retain the authority and responsibility to enforce its own restrictions or regulations concerning xeriscaping.

7) Does SB 100 invalidate developer site plans that were approved by our municipality?

No. SB 100 does not apply to these plans, which leaves them intact as approved by the municipality.

8) Does SB 100 apply to special districts?

Yes. When enforcing landscaping regulations, special districts must comply with the requirements set forth in SB 100.

American and military service flags

1) What rights to display the American flag does the law give to owners in common interest communities?

Unit owners and occupants have the right to display the American flag on the unit's property, windows, or balconies [regardless of whether the balcony is owned by the association] if the display complies with the Federal Flag Code, 4 U.S.C. 4 to 10. (A copy of the applicable sections of the Federal Flag Code is available on the HindmanSanchez website at www.hindmansanchez.com). An association may regulate the location and the size of flags and flagpoles, but may not absolutely ban the installation of flags and flagpoles altogether.

2) My neighbor has the American flag nailed up to a tree in their front yard. Does the law give him the right to do this?

When displaying the American flag, SB 100 requires that owners follow the flag display requirements in Federal Flag Code. The Code specifies that the flag should not be fastened, displayed, used or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way. Nailing the flag to a tree most likely does not comply with this requirement.

However, when making decisions on whether or not a display of the American complies with the Federal Flag Code, an association must remember the legislative intent was to allow homeowners to display the flag. Therefore, barring any blatant disrespect, an association should allow an owner to display the American flag.

3) Does the law address the right of unit owners to display flags other than the American flag such as the flags of other nations or P.O.W. flags?

SB 100 only addresses the right of owners to display the American flag and military service flags.

4) What does the law say about the display of military service flags?

Associations must allow unit owners and occupants to display military service flags with a star denoting the service of the unit owner or occupant or a member of the unit owner or occupant's immediate family in the active or reserve military service during a time of war or armed conflict. Although associations may have reasonable regulations on the method used to display military service flags as well as their size, such regulations must allow for flags measuring at least nine inches by sixteen inches.

Political Signs

1) What rights to display political signs does the law give to owners?

Associations may not prohibit the display of political signs on owners' property and in owners' windows 45 days before and 7 days after an election. Associations

may regulate the number of political signs displayed, but must allow at least one political sign per political office or ballot issue. In addition, an association may limit the size of the signs to the lesser of 36"x48" or the size allowed by the local ordinance regulating the display of political signs on residential property.

2) **I live in a condominium. My association will not allow me to hang political signs on my adjoining balcony, saying that it is a limited common element and I don't own it. Is my association allowed to prohibit me from doing this?**

Yes. Although the section on displaying American flags specifically states that an association must allow owners to display the flag on their balconies, the section on political signs only specifies that owners must be allowed to display such signs on their property and in their window. Based on statutory construction, the legislature's choice not to include balconies in the political sign provision means that associations may prohibit the display of political signs on balconies that are not the property of the homeowner (i.e. balconies or other structures that are limited common elements.)

3) **What if my municipality's ordinance allows for the display of signs for a shorter period of time? Can my association follow the time period for display set out in the more restrictive ordinance?**

No. Associations must comply with the time period set out in CCIOA by SB 100 (45 days before and 7 days after an election) during which associations must allow the display of political signs, despite the existence of a more restrictive municipal code. The municipality, not the association, has the authority and the responsibility to enforce its more restrictive time frame if it wishes to do so.

4) **I really supported SB 100, but when I put signs in my front yard that said, "SB 100 Is Spectacular," my association took them down. Doesn't SB 100 say that I can have these signs?**

SB 100 regulates the display of *political signs*, which it defines as "a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate, the recall of a public official, or the passage of a ballot issue." Signs conveying general political or ideological beliefs, unless a ballot issue, [e.g. "No Wal-mart!" "Support Our Troops!"] are not meant to directly influence an election's outcome and do not fall within this definition, meaning that the display of such signs are not protected by SB 100.

Emergency Vehicles

1) **When does an association have to allow an owner to park an emergency vehicle within its community?**

An association may not prohibit the parking of an emergency motor vehicle in the community if the unit owner or occupant is required by his or her employer to have the vehicle at his or her residence during designated times AND 1) the vehicle weighs 10,000 lbs or less; 2) the owner or occupant is a member of a volunteer fire department or an emergency service provider; 3) the vehicle has an official emblem designating it as an emergency service vehicle; AND 4) parking the vehicle will not obstruct emergency access or interfere with the reasonable needs of the other residents to use the community's streets and driveways.

2) **If the above conditions are met, where must an association allow an emergency vehicle to park?**

The association must allow the owner or occupant to park the emergency vehicle in the owner's driveway, the association's streets or guest parking area.

3) **I need my emergency vehicle as a condition of my employment by an emergency service provider and meet all the law's conditions. I would rather park my emergency vehicle on the street in front of my home, but my association states that I must park it in the guest parking area that is located around the block and behind the club house. May my association require me to park my emergency vehicle in such an inconvenient spot?**

The law is not clear on whether an association must allow a unit owner who meets all the criteria to decide whether he or she will park the emergency vehicle in his or her driveway, on the association's streets, or a guest parking space. Since your association is allowing you to park within the community, there is not a clear violation of section 38-33.3-106.5(d). It was, however, the law's intent to prohibit associations from penalizing those who meet the statute's requirements by unduly restricting the parking of their emergency vehicles. Taking this intent into consideration, your association may be well advised to allow you to park in the more convenient location.

4) **How big is a 10,000 lb vehicle?**

A Hummer, a large SUV, weighs close to 10,000 lbs. The 10,000 lb or less limitation means that the largest vehicle the statute covers is most likely a large ambulance, leaving owners looking for another place to park their hook and ladder trucks.

5) **My neighbor works for the local cable company and insists that he must have his cable truck when he is "on call" for cable emergencies. Does my association have to allow him to park his truck in his driveway?**

No. The statute defines "emergency service provider" as a "primary provider of emergency fire fighting, law enforcement, ambulance, or emergency medical services." Cable companies, utility companies, plumbers etc. do not fall within this definition.

Fire Mitigation

1) **I worry about forest fires. Does the law allow me to clear away the vegetation surrounding my home, regardless of what my association documents say about clearing vegetation?**

The law grants owners the right to clear away the vegetation surrounding their homes for fire mitigation purposes if such removal complies with a written defensible space plan that has been filed with the association.

2) **My neighbors are happily tearing up hedges that border our properties, claiming that they are following a written defensible space plan that they drew up for their property. Must my association allow this?**

No. The written defensible space plan must have been designed for the particular property by either the Colorado state forest service, an individual or company certified by the local government to create such plans, or the fire chief, fire marshal, or the property's fire protection district. An owner does not have a right – unless he or she is one of the approved entities – to create his or her own defensible space plan.

3) **The law states that the written defensible space plan must be created by one of three approved entities. Who gets to choose who draws up the plan – the association or the owner?**

Although the statute does not specify who chooses who will create the plan, a reasonable interpretation is that the owner, who has the desire to clear the vegetation and has begun the process to do so, has the right to choose who will create the plan.

4) **I want to replace my cedar shake shingles with asphalt. My association is stating that I must keep the cedar shake shingles. Is this allowed?**

No. The law prohibits associations from requiring the use of flammable roofing materials.

MISCELLANEOUS

1) **Are both pre and post-CCIOA common interest communities subject to the insurance provision brought to Colorado law by SB 100 and amended by SB 89?**

No. This provision is not part of CCIOA and has different applications to pre and post-CCIOA communities. CCIOA contains a provision stating that an association may adjust claims and also allows owners – to the extent that they are an insured in respect to liability arising out of their interest in the association's common elements or their association membership – to make claims against an association's insurance policy. CCIOA also has a provision stating that in the event of a conflicting state statute, the provisions in CCIOA will take precedence. Since post-CCIOA communities are subject to *all* of CCIOA, they are not bound by this new insurance law because the provisions in CCIOA take precedence over this conflicting new law. Pre-CCIOA communities, however, are *not* subject to these two provisions in CCIOA (the supremacy clause and the section all the association to file claims) unless they have elected to be included in all of CCIOA per 38-33.3-118, making this new insurance law applicable to them.

2) **What rights to owners have to file claims against association insurance policies?**

The law states that an owner may file a claim against an association insurance policy if the following conditions are met: 1) the owner has contacted the board or manager in writing regarding the subject matter of the claim; 2) the owner has given the association at least 15 days to respond in writing and, if requested, a reasonable opportunity to inspect the damage; and 3) the subject matter of the claim falls within the association's responsibilities.

3) **How will associations be able to keep insurance premiums from sky-rocketing?**

An association should educate its owners about how the insurance industry works and that filing claims leads to higher rates, which in turn will cause assessments to rise. In addition, an association should have a firm policy in place concerning the allocation of insurance deductibles to the individual filing the claim. Owners who understand both of these things will hopefully not abuse their ability to file claims as if they were additional insureds under the association's policy. Lastly, an association should work closely with its agent to prevent insurance premiums from rapidly increasing.