# WHAT MANAGERS NEED TO KNOW ABOUT CCIOA AND THE NONPROFIT ACT

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2. Previously Existing Planned Communities (Exceptions for Certain Existing Small, Commercial and Mixed Use Planned Communities). Previously existing planned communities are subject to limited applicable portions of CCIOA as set forth in Section 117.

   Existing small planned residential communities are not subject to applicable provisions of CCIOA if they contain not more than twenty (20) units and are not subject to any "development rights." [119]. These small planned communities are only subject to three sections of CCIOA, section 105 on "Separate titles and taxation," section 106 on "Applicability of local ordinances, regulations, and building codes" and section 107 on "Eminent domain." Existing small planned residential communities may be become bound by additional provisions of CCIOA if the Declaration is amended in conformity with applicable law (as allowed under section 120) or the election permitted under section 118 is made.

   Existing planned communities which are restricted to nonresidential use (commercial use) are not subject to any of the provisions of CCIOA. [121]. In these communities, the Declaration can be amended to expressly provide that CCIOA applies. [121].

   Existing mixed use planned communities are not subject to applicable parts of CCIOA unless either of the following two criteria are met: the real estate that comprises the residential units that may be used for residential uses would be a "planned community" in the absence of the commercial use units or the Declaration is amended to expressly provide that CCIOA applies. [121].

3. Previously Existing Cooperatives (Exceptions for Certain Existing Small Cooperatives). Previously existing cooperatives are subject to limited applicable portions of CCIOA as set forth in Section 117.

   Existing small cooperatives are not subject to the applicable provisions of Section 117 and the rest of CCIOA if they contain more than twenty (20) units and are not subject to any "development rights." These small cooperatives are only subject to three sections of CCIOA, section 105 on "Separate titles and taxation," section 106 on "Applicability of local ordinances, regulations, and building codes" and section 107 on "Eminent domain." These small cooperatives may be become bound by additional provisions of CCIOA if the Declaration is amended in conformity with applicable law (as allowed under section 120) or the election permitted under section 118 is made.

   Interestingly, existing commercial use cooperatives are not excluded from application of CCIOA, while new commercial use cooperatives are excluded.

**B. Applicability Limitations.** Of the portions of CCIOA that apply to Common Interest Communities in existence on June 30, 1992, as provided in Section 117, CCIOA provides. two limitations:

1. Events and Circumstances Occurring on or After July 1, 1992. [117] CCIOA's sections as applicable (set out in Section 117) are only applicable to events and circumstances occurring on or after July 1, 1992.

2. Application of CCIOA Provisions Cannot Invalidate Provisions of Existing Documents. [117] If there is a conflict between the association's legal documents and CCIOA, generally, the provisions in the community's legal documents will control.

**C. Application of CCIOA to Associations Existing on June 30, 1992: What do Existing Associations have to do? And What is Optional?**

1. Summary of Mandatory Provisions of CCIOA to be Complied With by Associations Existing on June 30, 1992.

   a. Associations must budget at least annually.
   b. Associations must remain incorporated.
   c. All regular and special meetings of the board (and committees) are open to attendance by members.
   d. Associations must promptly respond to proper requests for statements of account.
   e. Associations must keep owner account records.
   f. Associations must allow owners to examine records, including agendas.
   g. Fines can be imposed only after notice and a hearing, and the fine imposed must be reasonable.
   h. An owner or lender has a basis to seek recovery of their attorney fees from an Association for the association's failure to comply with CCIOA or the community's legal documents.
   i. Building restrictions and lawsuits to compel the removal of any building or improvement must be filed within one year.
   j. Associations can not waive rights conferred under CCIOA (i.e. the super lien).
   k. Common elements (clubhouses, green belts, etc.) can not be assessed and taxed by County government.
   l. Building codes can not discriminate against common interest communities.
   m. Local government cannot discriminate against common interest communities (i.e., impact fees).
   n. Condemnations in a CIC must comply with CCIOA guidelines.
   o. Amendments to existing legal documents must comply with requirements in existing legal documents (unless the court sanctioned amendment process is complied with).
   p. Conflicts in legal documents are resolved by the terms of the declaration.
   q. Associations (and owners) can not be held responsible for negligent acts of the developer/declarant.
   r. Negligence claims against an association can not be brought against owners.
   s. Declarants are liable to associations for monies not properly expended during declarant control.
   t. Associations must adopt responsible governance policies concerning: the collection of assessments, handling of board member conflicts of interest, conduct of meetings, covenant enforcement, inspection of association

records, investment of reserve funds, the adoption of policies, and procedure for addressing disputes (the last policy must be adopted effective January 1, 2007)

2. Summary of Discretionary Provisions of CCIOA that Associations Existing on June 30, 1992 Can Choose to Use.

a. Limited lien priority.
b. Court Sanction Amendment of Declaration.
c. Opting in to all of CCIOA.
d. Imposing late charges.
e. Recovering attorney fees (in collections or in any action to enforce the power of the association).
f. Continued recording of lien notices.
g. The association's ability to sue for construction defects or intervene in lawsuits between owners.
h. Rules and regulations may be adopted.
i. Receiverships can be used to collect assessments.
j. The other powers given to associations as set out above.

**III. Court Sanctioned Amendments of Declarations**

**D. A part of CCIOA now allows Colorado District Courts a special, restricted ability to amend Declarations by court order.**

**E. The statute is 38-33.3-217(7), as part of CCIOA, and applies to all common interest communities, as defined in CCIOA.**

**F. The statute allows an association to apply to a District Court to amend its Declaration, by court order, after it has taken the following steps:**

1. a proposed amendment to the Declaration must be prepared;
2. all owners must receive at least two notices (by any means consistent with the Colorado Revised Nonprofit Corporation Act) of the proposed amendment from the Association;
3. the Association must hold at least one member meeting (called and held in accordance with the Association's governing documents) to discuss the proposed amendment;
4. at least half the owners required under the existing Declaration must vote for the proposed amendment (i.e., if approval of 90% of the owners is currently required, then the procedure of petitioning a court for approval of the proposed amendment can be begun once 45% of the owners have voted for the proposed amendment).

**G. Lender approval is not required to begin the petition process to the Court, even if lender approval is required by the existing Declaration.**

**H. With the criteria listed above met, the Association, acting through its Board of Directors, may file a petition with the court, requesting that the court approve the proposed amendment.**

**I. After the petition is filed, the court then sets a hearing date (no earlier than 45 days, no later than 60 days after the date the petition was filed) on the petition.**

**J. Within ten (10) days after the hearing date is set, the Association must send written notice of the petition and of the hearing to all owners (by means consistent with the Colorado Revised Nonprofit Corporation Act), mail or hand deliver notice to the**

**Developer/Builder (Declarant) and send notice, by first class mail or hand delivery, to any lender who is entitled to notice of a Declaration amendment under the Declaration or any underwriting guidelines or requirements of the lender or FNMA, FHLMC, FHA, VA or GNMA.**

**K. The court must grant the petition and approve the proposed amendment if the Association has complied with certain requirements (however, amendments terminating the declaration or changing the allocated interests of the owners, will not be granted) and, if in response to the notice of the petition, the petition is not objected to in writing by:**

1. more than 33% of the owners,
2. more than 33% of the eligible lenders,
3. the Declarant [if such amendment eliminates any Declarant rights or privileges or if the Declarant is entitled to vote on the proposed amendment], or
4. FHA or VA [if the Community has been approved by FHA or VA to allow owners to be able to obtain FHA insured loans or VA guaranteed loans].

**L. The statute allowing this unique procedure, SB99-221, became law May 19, 1999.**

## IV. The Colorado Revised Nonprofit Act

### A. Maintaining corporate status

1. Requirements/Administrative Dissolution.

   a. Statute §7-134-201 sets the grounds for administrative dissolution. This statute follows:

      (1) The secretary of state may commence a proceeding under Section 7-134-202 for administrative dissolution of a nonprofit corporation if:
         (a) The nonprofit corporation does not pay any taxes, fees, or penalties imposed by this title when they are due;
         (b) The nonprofit corporation does not deliver its corporate report to the secretary of state when it is due;
         (c) The nonprofit corporation is without a registered agent or registered office;
         (d) The nonprofit corporation does not give notice to the secretary of state that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or
         (e) The nonprofit corporation's period of duration stated in its articles of incorporation expires.

2. Periodic report. Attached

### B. Corporate Records

1. Requirement.
   a. Statute §7-136-101 identifies corporate records. This statute follows:

      (1) A nonprofit corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of

all action taken by the members or board of directors without a meeting, a record of all action taken by a committee of the board of directors in place of the board of directors on behalf of the nonprofit corporation, and a record of all waivers of notices of meetings of members and of the board of directors or any committee of the board of directors.

(2) A nonprofit corporation shall maintain appropriate accounting records.

(3) A nonprofit corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members in alphabetical order, by class, showing the number of votes each member is entitled to vote.

(4) A nonprofit corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A nonprofit corporation shall keep a copy of each of the following records at its principal office:

(a) Its articles of incorporation;
(b) Its bylaws;
(c) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;
(d) The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;
(e) All written communications within the past three years to members generally as members;
(f) A list of the name and business or home addresses of its current directors and officers;
(g) A copy of its most recent corporate report delivered to the secretary of state under section 7-136-107; and
(h) All financial statements prepared for periods ending during the last three years that a member could have requested under section 7-136-106.

**C. Annual Meetings**

1. Requirement. Colorado law requires an annual members meeting, unless the Bylaws eliminate this requirement. Although the statute does not require any specific action be taken at the annual meeting (C.R.S. §7-127-101(1)), the association's governing documents generally contain specific requirements.

2. Place and Time of Annual Meeting. The time, date and place of the annual meeting may be set forth in the Bylaws. If the Bylaws are silent, the board of directors may determine the time, date and place by means of a resolution (C.R.S. §7-127-101(1)(3)).

3. Failure to Hold an Annual Meeting. The association's failure to hold an annual meeting at the specified date and time does not affect the validity of the association or its actions (C.R.S. §7-127-101(4)). Thus, the directors remain in office and

actions by the board are valid. However, the directors may be liable for breach of their duties to the association if they are responsible for the failure to hold an annual meeting.

**D. Regular Member Meetings**

1. Requirement. Colorado law does not require regular member meetings other than an annual meeting, but they may be held as provided in the Bylaws, or by a resolution of the board (C.R.S. § 7-127-101(2)).

**E. Special Meetings**

1. Who May Call a Special Meeting. Colorado law requires that a special meeting be held if:

   a. The board of directors or some other person authorized by the Bylaws, or by a resolution of the board, calls for the meeting; or

   b. Unless the Bylaws provide otherwise, the association has received a written demand for the meeting which states the purpose for holding the special meeting, and which is signed by at least ten percent (10%) of the members entitled to vote on the matter proposed to be considered at the meeting (C.R.S. §7-127-102 (1)(b)).

2. Date and Time of a Special Meeting. If the association does not issue notice of the special meeting within thirty (30) days of receiving a valid demand, then a person signing the demand may set the time and place of the meeting and issue the required notice (C.R.S. §7-127-102(3)).

3. Matters Considered At a Special Meeting. Unless the Bylaws provide otherwise, only business within the purposes described in the notice of the meeting may be conducted (C.R.S. §7-127-102(5)).

**F. Notice Requirements**

1. Reasonable Notice. Colorado law requires that members entitled to vote receive notice of meetings, consistent with the Bylaws and given in a fair and reasonable manner. While other means of notice may be fair and reasonable in light of all the circumstances, Colorado law expressly recognizes the following methods as fair and reasonable:

   a. When members receive at least ten (10) days but not more than sixty (60) days notice before a meeting. (C.R.S. §7-127-104(3)(a)).

   b. When notice is mailed by other than first class or registered mail and members given at least thirty (30) days, but not more than sixty (60) days notice (C.R.S. §7-127-104(3)(a)).

   c. Notice of annual or regular meeting which include a description of any matters which must be approved by members, including indemnification of directors, amendment of the Articles of Incorporation or the Bylaws, a plan to merge, sale of association property outside the regular course of business, dissolution of the association, or a proposed transaction in which a director has a conflict of interest (C.R.S. §7-127-104(3)(b)).

d. Notice of a special meeting which includes a description of the purpose or purposes for which the meeting was called, unless otherwise provided in the Bylaws (C.R.S. §7-127-104(3)(c)).

e. Fair and reasonable notice is also available through broadcast or newspaper publication provided that such notice is broadcast or published at least five (5) times, beginning no sooner than sixty (60) days before the meeting and ending no later than ten (10) days before the meeting (C.R.S. §7-127-104(3)(a)).

2. Notice required under CCIOA, for post CCIOA communities. Notice must include time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove an officer or member of the executive board. (C.R.S. §38-33.3-308(1)).

3. Notice of Matters Intended to be Raised by a Member. Notice must include not only routine matters or matters placed on the agenda by the board, but must include any matter that a member intends to raise at the meeting, if such notice is requested by a person entitled to call a special meeting, or if the president or secretary receives the request at least ten (10) days before notice is given (C.R.S. §7-127-104(5)(a)(b)).

4. Notice Required When Meeting is Adjourned. Generally, if an annual, special or regular meeting is adjourned to a different time, date or place no additional notice is required if the new time, date or place is announced before the meeting is adjourned (C.R.S. §7-127-104(4)).

5. Member List. Unless otherwise provided in the Bylaws, Colorado law requires the preparation of a member list after a record date for notice of a meeting is fixed. Such a list is also required when determining the members who are entitled to take action by written ballot without a meeting. The list must contain, in alphabetical order, the names of all members entitled to vote, their respective addresses, and the number of votes each is entitled to cast (C.R.S. §7-127-201(1)).

a. When Prepared for Meeting. If the list is prepared in connection with a meeting, it must be available for inspection by any member entitled to vote at the meeting, either ten (10) days before the meeting or two (2) business days after notice of the meeting is given, whichever is earlier. In either case, the list must remain available for inspection through the date of the meeting and any adjournment, at either the association's office, or at a place identified in the notice of the meeting, so long as the place named is within the same city as the meeting (C.R.S. §7-127-201(2)).

b. When Prepared for Action by Written Ballot. If the list is prepared in connection with action to be taken by members by written ballot, it must be available beginning on the date when the first ballot is delivered to the members and continuing through the date when the ballots must be received to be counted (C.R.S. §7-127-201(2)).

c. Right to Inspect and Copy. Subject to certain restrictions, any member entitled to vote, or that member's authorized agent or attorney may inspect and copy the list, during regular business hours, during the time it is available for inspection (C.R.S. §7-127-201(2)).

**G. Waiver of Notice**

1. Written Waiver. Waiver of notices of a meeting is effective when written and signed by the member entitled to notice. Such notice should be delivered to the association for inclusion in the minutes or filing with the corporate records, but delivery and filing is not a condition to the effectiveness of the waiver. A written waiver may be made either before or after the meeting (C.R.S. §7-127-105(1)).

2. Waiver by Attendance. If a member attends and votes at a meeting, whether in person or by proxy, he cannot later contend that the meeting was improperly called. The attendance at the meeting constitutes a waiver of notice of the meeting, except where the member's attendance is for the express purpose of objecting to the meeting on the grounds it was not properly called (C.R.S. §7-127-105(2)(a)).

**H. Quorums, Members Meetings**

1. Definition. A quorum is the number of members who must be present in person or by proxy in order to legally conduct business. Note that quorum requirements differ for board meetings, and from one association to another.

2. Requirements For Members Meeting. The quorum requirement is generally found in the governing documents of the association. In the absence of any provision in the Bylaws, Colorado law establishes twenty-five percent (25%) as a quorum (C.R.S. §7-127-205 (1)). Governing documents may establish a higher or lower percentage (C.R.S. §7-127-207(1)).

3. Effect of Members Leaving the Meeting. Once a member is counted for purposes of establishing a quorum, that member is considered present for the remainder of the meeting (including any adjournment) and cannot defeat the quorum by leaving the meeting before its conclusion. This rule can be altered by the Bylaws and does not apply if a new record date is set for an adjourned meeting (C.R.S. §7-127-205(2)).

4. Failure To Establish a Quorum. Without a quorum, the only business that can legally be transacted is to adjourn. Action taken at a meeting without a quorum being present is generally held to be void or voidable at the option of any member who objects. Presentation or reading of reports or discussion of topics of concern does not constitute action. Action involves the making of decisions (i.e., voting on a motion).

   a. Effect On Terms of Directors. Most documents provide that directors serve until their successors are elected and qualified. Absent a valid election, the term of the current directors will be extended until the election does take place (C.R.S. §7-128-105(5)). In the event that a holdover director resigns, the remaining directors should simply appoint his or her successor to serve until the next valid election (C.R.S. §7-128-110 (1)).

   b. Duty To Establish a Quorum. Most statutes and documents are silent on this issue of how many times must you try to get a quorum.

5. Modifying The Quorum Requirement. The Bylaws may provide for a higher or lower quorum requirement than the twenty-five percent (25%) established by law in the absence of a quorum requirement in the governing documents (C.R.S. §7-127-207(1)). However if the association wishes to amend its Articles of Incorporation or Bylaws to change the quorum requirements, the amendment

must be approved in accordance with the quorum requirement then in effect, or as proposed to be adopted, whichever is higher (C.R.S. §7-127-207(2)).

## I. Proxies in General

1. Definition. Colorado law permits a member to appoint a proxy to exercise voting privileges on that member's behalf unless otherwise provided in the Bylaws (C.R.S. §7-127-203). Most governing documents permit the use of proxies. Technically, the "proxy" is the person appointed, not the document appointing the person. In practice however, "proxy" is used to refer both to the person and the document. Note that proxy requirements differ for board meetings.

2. Form and Execution. Most documents are silent as to the form and substance of proxies. Similarly, Colorado statute contains no limitations the manner in which a proxy can be appointed, although it states specifically that an appointment form signed by either the member personally or the member's attorney-in-fact constitutes a valid and effective appointment (C.R.S. §7-127-203(2)(a)). The proxy may be transmitted electronically, so long as it includes written evidence that the member transmitted or authorized the transmission of the proxy. The signature on a proxy is generally considered valid whether by manual signature, typewriter, fax transmission, etc.

   a. Suggested Proxy Requirements. The use of proxies can easily be abused. The potential for abuse can be limited however by requiring and accepting only an "official" proxy form. This requirement should be stated in the Bylaws. Forms utilizing the following information and procedures are suggested. Some may be required.

   b. The type of meeting for which the proxy is given.

   c. The date, time and place of the meeting.

   d. The date of the proxy.

   e. The name and signature of the member(s) appointing the proxy

   f. The address or unit number of the member(s) appointing the proxy.

   g. The identity of the person appointed (the proxy holder) by name or title.

   h. A general description of the matters to be voted on.

   i. Space on the form for write-in candidates.

   j. A means of marking or numbering to prevent abuse.

   k. Limit the number of proxies to be voted by any individual.

   l. Require that proxies be delivered only to the board or management.

      (1) There may be problems with the authority to do so unless this restriction is placed in the Bylaws.

      (2) Both the board and management can have a vested interest in the election outcome.

3. Directed Proxies.

   a. Colorado law allows for limited proxies, (i.e. those specifying those matters which the proxy holder may vote upon, and whether the vote shall be cast for or against each matter) (C.R.S. §7-127-203 (8)).

   b. Although not a solution for all problems, the use of directed proxies can greatly reduce the incidence of proxy abuse. It allows the proper solicitation of proxies so that the association can conduct its business. If the proxy giver indicates his or her preference, it will enhance the election of those whose views most closely coincide with those held by the voting members.

   c. If no preference is indicated (and so long as the candidates may be elected by a plurality), the proxy nonetheless counts toward a quorum and no single individual (or group) can show up at the meeting with the power to elect themself (or themselves) unless they have actually convinced enough proxy givers to so vote.

4. Who May Appoint a Proxy.

   a. If a voting certificate is on record with the association, the voting representative is the only person who may appoint the proxy.

   b. Otherwise, the record title owner(s) must appoint a proxy.

   c. Certain other, authorized individuals may sign a proxy on behalf of the record title owner(s) including:

      (1) A receiver or trustee in bankruptcy;

      (2) The owners' administrator, guardian, executor or conservator;

      (3) The owners' attorney in fact (C.R.S. §7-127-204(2)).

5. Who May Be a Proxy Holder. Unless the governing documents impose restrictions anyone with legal capacity may be a proxy holder (C.R.S. §7-127-203(2)(b)). If more than one person is appointed as the proxy holder, a majority of those designated must be present to exercise the proxy.

6. Number of Proxies Held. Absent a restriction in the governing documents, there is no limit on the number of proxies a person may hold.

7. Assignment of Proxies. A person appointed proxy holder may not assign the designation to another individual. The authority rests in the person appointed, not the documents.

8. Effectiveness and Duration of Proxies. A proxy is effective when the association receives it and remains effective for eleven (11) months, unless the appointment form specifies a different duration. Except to the extent that the association has a good faith question regarding the validity of the proxy appointment, and to the extent that the appointment form may contain express limitations, the association is entitled to accept the proxy's vote as that of the member making the appointment (C.R.S. §7-127-203(3)).

9. Revocation. A proxy may be revoked at any time by the member appointing it, prior to or at the meeting by:

a. Executing and delivering to the Secretary or other agent authorized to count proxy votes, either a written statement of revocation or a new proxy (C.R.S. §7-127-203(6)(b)).

b. Appearing at the meeting and voting in person (C.R.S. §7-127-203(6)(a)).

(1) If a member who has appointed a proxy appears at the meeting and casts a vote, the original proxy is considered invalid and a new proxy must be authorized.

**J. Voting by Members**

1. General. The right to vote is inherent in and incidental to the ownership of a unit. The general practice of developers is to allocate one vote per unit. There are many exceptions to this general rule, the most common of which is when weighted voting is authorized by the governing documents. Weighted voting is when the unit owner is entitled to the number of votes equal to the total percentage of ownership in the common elements (typically determined on a square footage basis). Note that in such cases written ballots will need to be used.

2. Number of Votes Needed. Generally, the number of member votes necessary to approve a matter or determine an election is provided in the Bylaws. Most Bylaws state that all issues before the body at an annual or special meeting at which a quorum is present will be decided by a majority of those present in person or by proxy. This can be interpreted such that a majority must vote in favor of each successful candidate. The better interpretation is that the "election" is determined by the vote of the majority and that the individuals receiving the most votes win the election. The best solution is for the Bylaws to state that each candidate need not receive a majority vote and that those receiving the highest are vying for the terms of varying length, those receiving the highest plurality should be awarded the longest terms. If the Bylaws cannot be amended to include plurality language, the board of directors should seek a legal opinion to that effect and then adopt and publish a policy by resolution so interpreting the Bylaws. The following provisions are supplied by Colorado statute and apply to the extent that the Bylaws are silent.

a. Matters Other than the Election of Directors.

(1) Once a quorum is established, any matter other than the election of Directors, is approved if more members vote for the proposition than against. Thus, abstentions are true abstentions and not considered in the vote. Accordingly, once the abstentions are ignored, a proposition may be passed even though less than a majority of the quorum votes in its favor. Note, however, that a greater number may be required if provided in the Bylaws (C.R.S. §7-127-205(3)).

b. Election of Directors.

(1) One Director. Unless provided otherwise in the Bylaws, where only one Director is being voted on, that Director must receive affirmative votes from a majority of members present at the meeting. Note that a quorum must be established prior to any vote.

(2) Multiple Directors. Unless provided otherwise in the Bylaws, when more than one person is running for the board, the number of candidates (equal to the number of positions to be filled) who receive the highest number of votes shall be elected. For example, if two board positions are open and three candidates receive 50, 40, and 30 votes, respectively, the two **candidates who received 50 and 40 votes will be elected, even though neither received an absolute majority. Abstentions are ignored and count neither for, nor against, any candidate.**

c. Other Methods of Electing Directors. The association's Bylaws may set forth any reasonable method for the election of Directors, including elections on the basis of organizational units or by preferential voting (C.R.S. §7-127-209).

3. Cumulative Voting. Colorado law permits cumulative voting only if it is authorized in the Bylaws. Cumulative voting allows each owner to cast as many votes as there are directors up for election. The votes may be distributed among the candidates or cast for a single candidate (C.R.S. §7-127-208(1)). Cumulative voting aides the minority interests.

a. Procedural Requirements. In order for members to vote cumulatively, the notice of meeting must have announced that cumulative voting was to be used, or a voting member must give notice during the meeting, that the member intends to cumulate his or her votes. In either event, all members are then entitled to cumulate their votes (C.R.S. §7-127-208(2)).

b. Use of Cumulative Voting to Remove Directors. If cumulative voting is used, then a Director cannot be removed if the number of votes cast against the removal would have been sufficient to elect the Director if voted cumulatively (C.R.S. §7-128-208(3)).

4. Nominations From the Floor vs. The Formal Nominating Committee Process. This is an issue that may be determined by the governing documents but is usually left to the discretion of the board of directors. An ambitious and organized board may appoint a nominating committee, solicit nominations, determine the willingness to serve of those nominated, procure from the nominees their biographies and platforms, and present a neat package to the owners beforehand, or only seek nominations from the floor. Many boards adopt a combination of the two.

a. Closing Nominations From the Floor. Few documents are specific enough to require that candidates be obtained only through the committee process, so most boards are constrained from closing the nomination process until a motion to do so is passed at the meeting.

b. Eliminating Nominations From the Floor. A board seeking to adopt a nominating-committee-only process for its association should do so only by amendment of the appropriate governing document, as a resolution lacks the requisite authority to survive an override vote of the owners at a meeting.

c. Combining Floor Nominations With a Committee Process. Many associations use a combination of the two processes with great success. Use of the nominating committee can help insure that there is at least one candidate for each vacancy. When nominations are also allowed from the

floor, the democratic process appears to be in full working order, even if no additional nominees emerge. The dual process can actually increase the number of nominees (especially if there is a perception that the nominating committee slate is "fixed") and create a broader range of choices which should allow the true will of the electorate to prevail.

d. Seconds of Nominations and Acceptance by Nominees. It is recommended that all nominations from the floor be seconded. This requirement complies with Robert's Rules of Order to which many documents defer on procedural issues and can prevent the ploy of cross-nomination where two candidates, who are otherwise unsupported, agree to nominate one another.

5. Election Materials. Election materials are created with association funds. These materials should comply with at least minimal precepts of impartiality to preserve the integrity of the association and the process. Alphabetize nominees on notices, flyers, proxies, ballots and the like. Give no indication of preference.

6. Secret Ballots. Some governing documents require secret, written ballots to be used in electing directors. Unless specified in the governing documents, the use of a secrete ballot is only required if requested by 20% of the members present in person or by proxy. Absent a requirement that election of directors be by written ballot, voice vote or roll call voting is permissible. If cumulative voting is permitted, written ballots will need to be used.

7. Written Ballots as an Alternative to Member Voting at a Meeting. Unless prohibited in the Bylaws, Colorado law authorizes voting by written ballot without a meeting, for any action that could otherwise be taken at any regular, special or annual meeting (C.R.S. §7-127-109).

a. Number of Votes and Quorum Requirement. The number of votes by written ballot needed to establish a quorum and the number of votes needed to approve an action by written ballot are identical to the quorum and voting requirements of a meeting (C.R.S. §7-127-109(3)).

b. Notice and Content Requirement. For such an action to be valid, the law requires each member who is entitled to vote to receive a written ballot which sets forth each proposed action, along with the opportunity to vote for or against each proposed action (C.R.S. §7-127-109(2)). In addition, each ballot must indicate the number of responses necessary to meet the quorum requirements and state the percentage of approvals needed to approve each matter. Finally, each written ballot must be accompanied by written information which is sufficient to allow members to reach an informed decision and state the deadline by which the ballot must be received to be counted (C.R.S. §7-127-109(4)). A vote cast by written ballot may not be revoked, unless revocation is permitted in the Bylaws (C.R.S. §7-127-109(5)).

8. Changing Votes. As a general rule, a member voting at a meeting has the right to change his vote, whether by voice or in writing, up to the time the vote is announced.

9. Multiple Owners of a Single Unit. Many governing documents address voting when a unit is owned by two or more persons. The governing documents often require that a voting certificate be filed with the secretary of the association. If the governing documents are silent, Colorado law applies (C.R.S. §7-127-202(3)):

a. If only one owner votes, his vote binds the other owners.

b. If more than one person votes, the majority of the vote for that unit prevails.

c. If more than one person votes, but the vote is evenly split, the vote does not count.

10. Suspension of Voting Rights. Most governing documents have a provision for suspending the voting rights of any member who is delinquent in his/her assessments or in some cases for violation of the covenants or rules and regulations. In such cases, it is important to have current information at the meeting regarding assessments and to comply with notice requirements, if any, in the governing documents.

**K. Challenging Elections and Removal of Directors**

1. Procedure at the Meeting. Once the results of a vote are known and the presiding officer has declared the results of the vote, it is final. If a member at the meeting wishes to have a re-vote or recount, the proper motion is to move for reconsideration of the vote previously taken. Once the meeting is adjourned, the proper procedure to question or change the results is to begin recall procedures or commence legal action seeking to have the results nullified. As the debacle in Florida showed this is not easily done.

2. Effect of Member's Attendance. If a member attends and votes at a meeting whether in person or by proxy, he cannot later contend that the meeting was improperly called. The attendance at the meeting constitutes a waiver of notice of the meeting, except where the members' attendance is for the express purpose of objecting to the meeting on the grounds it was not properly called (C.R.S. §7-127-105(2)(b)).

3. Procedure Generally. The governing documents typically contain provisions concerning the circumstances and methods by which directors may be removed. Colorado law requires that where a director is to be removed at any meeting of the members, notice of the meeting must indicate that is the purpose of the meeting (C.R.S. §7-128-108(1)(d)). Under the Colorado statute, directors may be removed as follows:

a. The voting members may remove a director which they elected, with or without cause, unless the Bylaws specify that a director may be removed only for cause (C.R.S. §7-128-108(1)(a)).

b. A director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors (C.R.S. §7-128-108(1)(c)).

c. A director appointed by the board of directors may be removed, with or without cause, by a majority vote of the directors then in office, unless the Bylaws require a greater number. If the director was appointed by the board to fill the vacancy of a director who was elected by the members, only the members may remove that director (C.R.S. §7-128-108(1)(f)).

d. When an association has cumulative voting, a director may not be removed if the number of votes cast against his removal would be

sufficient to elect the director, if voted cumulatively at an election (C.R.S. §7-127-208(3)).

4. Litigation and Attorney Fees.

a. Hiring Counsel. When there are challenges to the legality of an election, it is proper for the association to hire counsel to advise the association on the correct procedure(s) and course of action for compliance with statutory law as well as the governing documents of the association.

b. Attorney Fees a Proper Expenditure. An association has the right to be governed by its elected representatives and defend against any interference with that right. Attorney fees incurred for advice as to the correct procedure for the association to take concerning a contested or challenged election are a proper expenditure.

c. The Association as Client. The issue becomes more involved and emotional when individual directors attempt to have the association reimburse them for their attorney fees incurred in connection with their individual attempts to defeat a recall effort and remain in office. The question becomes whether the association has a legitimate interest, distinct from the goals of the individual directors, in paying for such representation.

(1) Attempts to Remove a Director. When there is a legal attempt to remove a director from office based upon an allegation of negligence or misconduct in the performance of his duties, courts have tended to permit the director to recover his attorney fees from the association if he is successful in retaining his office and not permit the recovery of attorney fees when the director is unsuccessful. A few cases have even permitted the challenging party to recover attorney fees where the challenge was successful.

(2) Unsuccessful Attempts. When there is an attempt to remove a director from office on purely political grounds and the director is successful in retaining office, case law is less clear and decisions have gone both ways.

(3) Governing Documents. These issues may also be addressed in provisions in the association's governing documents.

**L. Board Meetings**

1. Requirements. Although Colorado law does not require meetings of the board of directors, most governing documents state specific requirements. Moreover, Directors may be liable for breach of their duties to the association if they fail to hold regular meetings.

2. Notice of Meetings. Notice is not required by statute for regular meetings of the board, but two (2) days notice is required for special meetings unless otherwise provided in the Bylaws (C.R.S. §7-128-203).

3. Quorum Requirements for board Meeting. A quorum is a majority of directors then in office, unless the Bylaws provide otherwise (C.R.S. §7-128-205(1)). The Bylaws, however, may not provide for a quorum requirement of less than one-third (C.R.S. §7-128-205(2)). Colorado law permits a director with a conflict of interest to be counted in establishing a quorum (C.R.S. §7-128-501(4)).

4. Effect of Director Leaving the board Meeting. A quorum must exist at the time action is taken by the board. Thus, unlike a members meeting, directors can "break" a quorum by leaving the board meeting (C.R.S. §7-128-205(3)).

5. Director's Proxies. If provided in the Bylaws, board members may grant and exercise proxies within following limits (C.R.S. §7-128-205(4)).

   a. The proxy must be signed, written and given to another director who is present at the meeting.

   b. The proxy must be given for the purpose of directing a vote, for or against a particular proposal which is described with reasonable specificity in the proxy.

   c. A proxy which meets the criteria, above, may be used in determination of a quorum with respect to the particular proposal described in the proxy.

6. Number of Votes Required. Generally, board action requires the approval of a majority of directors either present or voting at a meeting at which a quorum is present. A careful reading of your Bylaws is necessary to determine which. The Bylaws may impose a greater requirement (C.R.S.-128-201(2)).

7. Participation by Telephone. Telephonic participation in a meeting counts for quorum and voting purposes, provided that all directors participating in the meeting can hear each other simultaneously, e.g. a conference call (C.R.S. §7-128-201).

8. Action Without a Meeting. Unless otherwise provided in the Bylaws, action can be taken by the board of directors without a meeting, provided each and every director signs the consent and either:

   a. Votes for the action; or

   b. Votes against or abstains, AND waives the right to demand that a meeting be held (C.R.S. §7-128-202(1).

**M. Meeting Agenda for Board Meetings**

1. Suggested Agenda for Board Meeting.

   a. Call to order.
   b. Approval of last Meeting's minutes.
   c. President's Report
   d. Treasurer's report.
   e. Management report.
   f. Committee reports.
   g. Old business.
   h. New business.
   i. Adjournment.

**N. Rules of Order. The strict requirement of Roberts Rules of Order are not necessary as they tend to be too cumbersome for board meetings involving 3 - 7 board members. However, following some basic parliamentary procedures (i.e., rules of order) is strongly recommended.**

1. Basic parliamentary procedure or rules of order to be followed should include the following:

   a. Motion required for any decision.
   b. Discussion limited to motion topic only.
   c. Everyone given opportunity to speak.
   d. One person speaks at a time.
   e. Chair decides who speaks.
   f. Set reasonable restrictions/limits on speaking.

**O. Homeowner (Resident) Open Forum**

1. Allow homeowners to speak as to any issues prior to board vote.

   a. Allows board to think about homeowners' concerns before formally discussed at meeting.

   b. Provides cooling-down period for homeowners and board.

2. Allows homeowners to vent complaints early.

3. Put homeowners' comments that board desires to discuss on agenda under new or old business.

   a. Homeowners' time thus will not consume major portion of meeting.

   b. Homeowners assured comments placed on agenda to be discussed by board and possibly assigned to committee.

4. Consider placing time limit on each speaker.

5. President should conduct but not feel compelled to respond to comments or questions. Board members should remain silent except to ask questions.

6. President should take control -once you move on, that is the end of the discussion.

7. No requirement that board members respond to questions or comments. Don't be "baited" into responding if you are not prepared.

8. Suggestion - note homeowner's comments on chalk board or easel for all to see.

   a. Assures comments will be discussed.

   b. Avoids repetitive commentary.

**P. Minutes**

1. Importance of Minutes

   a. Critical record in event board or association is sued.

   b. A protective measure for board and association.

   c. Only record of actions taken by association and board.

2. Purpose

a. Provides a record of actions taken by board of directors.

b. Establishes and protects authority of board's actions.

c. Minutes cannot create the authority for board's actions.

d. Can be used to rebut a presumption of authority.

e. Can protect Directors from breach of fiduciary duty and malfeasance claims

f. Minutes are required to be kept by Colorado statute.

g. Failure to keep minutes will not render decision or act of board invalid.

3. Suggestions for Better Minutes

a. Draft minutes contemporaneously; obtain approval by board within a reasonable time after drafting.

b. Consider using a recording secretary who is not a member of the board.

(1) Frees board members to participate.

(2) Allows recording secretary to devote attention to taking accurate notes.

c. Should be brief and concise --taking minutes not same as dictation.

d. Contents of Minutes

(1) Association's name and the words "Minutes of the Meeting of (name of association)."

(2) Date, time, place of meeting.

(3) Names of persons present in official capacity. If membership meeting, only record number of votes present.

(4) Record names of persons dissenting.

(5) Resolutions.

(a) Record resolution exactly as made, seconded and passed.

(b) Briefly state rationale behind passing - but not summary of debate.

(c) Attach adopted reports to minutes.

(d) Best if motions required to be in writing and put on agenda before discussion.

(e) Major issues - formal resolutions; minor matters - simple motions.

e. A Permanent Record - Don't throw away.

4. Committee Reports

a. Always put in writing and attach to minutes.

b. If no report, state so in writing.

5. Approval

a. Minutes should be approved at the next regular board meeting.

b. Only after minutes have been approved should secretary sign them.

**PERIODIC REPORT**

PERIODIC REPORT made pursuant to § 7-90-501, C.R.S., on behalf of the entity identified on the reverse side. This Report must be typed or, if legible, it may be manually printed. Execution (a signature) is not required. Report current information for the following items; no director, officer or any other information is required.

(1) Name of individual completing Report:

(2) Name of entity's Registered Agent:

(3) Street Address of entity's Registered Office (must be in Colorado):

(4) Address of entity's Principal Office:

Optional:
(5) Additional mailing address for entity:

(6) Entity's e-mail address:

If more space is required for any of the above items, continue on an attached 8-1/2 X 11 sheet and check here □. Deliver this Report to: Colorado Secretary of State, 1560 Broadway, Suite 200, Denver, CO 80202-5169, with the fee stated on the reverse side payable to: Colorado Secretary of State. A peel-off mailing label is provided. This report must be received (not postmarked) on or before the due date stated on the reverse side. For more information, call 303 894 2251, fax 303 894 2242, web site, http://www.sos.state.co.us/