

Revisions to CCIOA from 2006 and 2005

COMPLIANCE WITH AND REVIEW OF SENATE BILLS 06-89 AND 05-100

This article reviews these statutory changes and how owner associations and managers can comply with these statutes. This review includes changes made by SB 06-89 to SB 05-100 and includes the most relevant provisions of SB 05-100.

Note: Bold text is used to highlight the changes made in SB 06-89.

TABLE OF CONTENTS

1. Enforcement of SB 05-100, SB 06-89 and other Parts of CCIOA	1
2. How to Interpret Vague Language.....	1
3. Application to Time Shares and Vacation Clubs.....	1
4. Note on Application of SB 06-89	1
5. Eight Required Policies and Procedures of Owner Associations	1
6. Association Financials	2
7. Association Disclosures	3
8. Secret Ballots	5
9. Ballot Counting At Member Meetings	6
10. Owner Rights to Participate at Board Meetings	7
11. Notice Requirements for Member Meetings.....	7
12. Declaration Amendments.....	8
13. Insurance Claims by Owners on Association Policies.....	10
14. Membership List Restrictions	12
15. Association Records.....	12
16. Conflict of Interest Transactions of Board Members with the Association.....	13
17. Standard of Care for Directors Investing Reserve Funds	14
18. Attorney Fees for Enforcement.....	15
19. Seller Disclosure of Common Interest Community Required	15
20. Restrictions on Enforcement of Certain Covenants/Rights of Owners to Display the Flag..	17
21. Required Owner Education/Orientation	20
22. Managing Agent Contracts	21
23. Applicability of SB 05-100 and SB 06-89.....	21

**COMPLIANCE WITH AND REVIEW
OF
SENATE BILLS 06-89 AND 05-100**

1. Enforcement of SB 05-100, SB 06-89 and Other Parts of CCIOA

Both bills are principally amendments and revisions to CCIOA (the Colorado Common Interest Ownership Act). As part of CCIOA, the provisions of this state statute are not enforced by any governmental agency, authority or body. Enforcement of CCIOA provisions is similar to enforcement of declaration provisions, and a party that successfully pursues enforcement through the courts has a claim for attorney fees under CCIOA.

2. How to Interpret Vague Language

Provisions of state statutes can be challenging to interpret, as statutes are written to be broad and to apply state wide. The purpose of this article is to aid boards, managers and owners in understanding these new statutes and in complying with the requirements of these statutes.

3. Application to Time Shares and Vacation Clubs

Application of SB 05-100 and SB 06-89 to time share units, club use rights, timeshare associations and vacation clubs is noted throughout this article.

4. Note on Application of SB 06-89

Most of SB 06-89 became law and applicable on May 26, 2006.

Two sections (the eighth governance policy required and the required disclosure in contracts for sale) are applicable January 1, 2007.

5. Eight Required Policies and Procedures of Owner Associations

Application: Applies to all common interest communities and owner associations subject to CCIOA, including timeshare owner associations and club associations.

The Law under the Senate Bills: Owner Associations are required to have eight written responsible governance policies and procedures on the following topics, as of the dates indicated:

- a. collections (1-1-06) [Source: SB 05-100]
- b. conflicts of interest (1-1-06) [Source: SB 05-100]
- c. conduct of meetings (1-1-06) [Source: SB 05-100]
- d. enforcement of covenants and rules (1-1-06) [Source: SB 05-100]

- e. records, inspection and copying (1-1-06) [Source: SB 05-100]
- f. investment of reserves (1-1-06) [Source: SB 05-100]
- g. adoption of policies (1-1-06) [Source: SB 05-100] and
- h. **Disputes between the association and unit owners. A copy of this policy must be made available to an owner on request.** (1-1-07) [Source: SB 06-89]

How to comply? Adopt and maintain the required policies. Update, revise and simplify these policies as needed, and as the governing documents are amended by the members and/or the board.

6. Association Financials

- a. Accurate and Complete Standard vs. GAAP

Application: Applies to all common interest communities and owner associations subject to CCIOA, including timeshare owner associations and club associations.

The Law Under the Senate Bills: **Accurate and complete accounting records are to be kept and general accepted accounting principles (GAAP) are not required to be followed unless an audit or review is performed.** [Sources: SB 05-100 and SB 06-89]

How to comply? Keep association records accurate and complete.

- b. Discretion of the Board for Audits and Reviews

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units.

The Law under the Senate Bills: **Audits or reviews (reviews were required once every two years by SB 05-100) are allowed at the discretion of the board. If a review or audit is performed, then general accepted accounting principles or auditing standards, the tax basis of accounting or the cash basis of accounting are be used.** [Sources: SB 05-100 and SB 06-89]

How to comply? Boards should consider whether a review or audit should be performed.

Ideally, this consideration should occur annually; yet, the association is not required to have an audit or review performed annually under state law.

Check the governing documents for the community to see if an audit or review is required under those documents.

Also, check the management contract, which sometimes requires a periodic audit or review.

If an audit or review is performed, then the auditor or person performing the review should follow GAAP or audit standards, the tax basis of accounting or the cash basis of accounting.

c. Audits and Reviews Can Be Required by 1/3 of the Owners

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units.

The Law under the Senate Bills: **An audit is required if the association has annual revenues or expenditures of at least \$250,000 and an audit is requested by owners of 1/3 of units.** [SB 05-100]

A "review" is required if requested by owners of 1/3 of the units in the association.
[Source: SB 06-89]

How to comply? If expenditures or revenues exceed \$250,000.00 and 1/3 of the owners request an audit, an audit must be performed.

Regardless of expenditures or revenues, if 1/3 of the owners request a review, then a review must be performed.

d. Qualifications of Financial Experts that Provide Reviews

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units.

The Law under the Senate Bills: **Qualifications are established for persons performing financial reviews. The qualifications include at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study.**
[Source: SB 06-89]

How to comply? If a review is to be performed, the association should engage a qualified expert. We recommend that this expert be an independent certified public accountant.

7. Association Disclosures

a. Basic Annual Disclosures

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units. Developer controlled associations are also exempt.

The Law under the Senate Bills: Associations must make certain disclosures (name of the association; name, address and telephone of the association's agent or manager, if any; name of the community; and initial date of recording of the declaration and recording information for the declaration). These disclosures must be made at no charge to homeowners, **within 90 days after transition**. In addition, if the association's address, designated agent or management company changes, the association must make updated information available within 90 days after the change. [Sources: SB 06-89 and SB 05-100]. A portion of these disclosures was previously required of all common interest communities, including declarant controlled communities. **Now, the exemption to declarant controlled communities is broadened.** [Source: SB 06-89]

How to comply? Once transition of control has occurred, the association should disclose its name, address, phone, managing agent, name of the community and date of recording and recording information of the declaration. These documents can (but are not required) to be a part of the extended annual disclosures (discussed below).

If the managing agent changes at any time after transition has occurred, then a notice of the change must be sent to owners within 90 days.

b. Extended Annual Disclosures

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units. Developer controlled associations are also exempt.

The Law under the Senate Bills: Other detailed disclosures of SB 05-100 (the details are set forth below) **including the required policy on disputes between the association and unit owners (effective January 1, 2007)** may be made by:

- i. posting the documents on a website with an accompanying notice of the URL by email or first class mail;
- ii. maintenance of a literature table or binder;
- iii. mail; or
- iv. personal delivery.

[Source: SB 05-100]

How to comply? Determine which of the four means of disclosure to use, and then, through that means, annually disclose the following:

- the date the association's fiscal year begins;
- the association's operating budget for the current fiscal year;

- a list—organized by unit type—of the association's current regular and special assessments;
- the association's annual financial statements—including any money held in reserve for the fiscal year immediately preceding the current annual disclosure;
- the results of any available financial audit or review;
- a list of all association insurance policies, including, but not limited to, the following:
 - property
 - general liability
 - association director and officer professional liability
 - fidelity policies
- the insurance company names, policy limits, policy deductibles, additional named insureds and expiration dates of all policies listed;
- the association's bylaws, articles and rules and regulations;
- the board meeting and member meeting minutes for the fiscal year immediately preceding the current annual disclosure; and
- the association's eight responsible governance policies.

Associations must make this information readily available at no charge to a unit owner at the unit owner's convenience; however, owners may be charged for copies of documents if disclosure is made through the maintenance of a binder or a literature table.

c. Audit and/or Review Disclosures as a Part of the Extended Disclosures

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units. Developer controlled associations are also exempt.

The Law under the Senate Bills: **Disclosure of audits or reviews previously required (within 90 days of fiscal year end) is made more flexible to allow and require disclosure of the most recently available audit or review.** [Source: SB 06-89]

How to comply? If an audit or review is performed, have the results of that audit or review disclosed with the next extended annual disclosure.

8. Secret Ballots

a. Secret ballots for Contested Elections

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units.

The Law under the Senate Bills: **No longer must all board member elections be held by secret ballot. Only contested elections are required to be by secret ballot.**

[Sources: SB 05-100 and SB 06-89]

How to comply? Be prepared for secret balloting if an election includes more candidates than there are open positions.

b. Exemption to Boards Elected by Delegates

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units.

The Law under the Senate Bills: **Boards elected by delegates are not required to be elected by secret ballot.** [Sources: SB 05-100 and SB 06-89]

How to comply? If delegates elect board members, secret balloting is not required, even for elections where more candidates are running than the numbers of positions open.

c. Secret Ballot on Action Items at Member Meetings

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units.

The Law under the Senate Bills: **Any motion or vote at a member meeting is no longer required to be by secret ballot, if one owner requests a secret ballot. With the adoption of SB 06-89, secret balloting on member votes (other than the election of directors) is not required unless 20% of the members present at the meeting, in person or by proxy, provided a quorum is present, ask for a secret ballot.** [Sources: SB 05-100 and SB 06-89]

How to comply? If 20% of the members present [in person or by proxy at a members' annual or special meeting at which a quorum is present] require balloting on any vote or action item by secret ballot, then a secret ballot must be used. Be prepared.

9. Ballot Counting at Member Meetings

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units.

Ballots must no longer be counted by either (1) a neutral third party or (2) a unit owner who is not a candidate who is present at the meeting and is selected randomly from a pool of two or more such non-candidate owners. [Source: SB 05-100]

The Law under the Senate Bills: **With the adoption of SB 06-89, the choices under state law are either (1) a neutral third party, or (2) committee of volunteers, exclusive of board members and in the case of contested elections, exclusive of board member candidates.** [Source: SB 06-89]

The results of a secret ballot shall be reported without reference to or identifying the owners who participated in voting. [Source: SB 05-100]

How to comply? Have the teller's committee for tabulating secret ballots selected at or before the meeting, excluding board members and any candidates sought to be elected.

When a neutral third party is desired to tabulate secret ballots, consider engaging the League of Women Voters or other similar organization, in advance, to count secret ballots.

10. Owner Rights to Participate at Board Meetings

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units.

The Law under the Senate Bills: **Owners continue to have the right to speak at board meetings before the board takes formal action on any item under discussion, and conflicting provisions that appeared to require approval from a majority of the board have been eliminated. If more than one person desires to speak, and there are opposing views, the board is to allow a reasonable number of persons to speak on each side of the issue.** [Sources: SB 05-100 and SB 06-89]

How to comply? Adopt and maintain an owner participation or conduct of meetings policy that defines the owner's right to participate in board and member meetings. The policy should cover when owners may speak and what procedures need to be followed to participate in board and member meetings.

11. Notice Requirements for Member Meetings

a. Content

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills: Notices of any meetings must include the following:

- i. the general nature of any proposed amendment to the declaration or bylaws,
- ii. any budget changes, and
- iii. any proposal to remove an officer or member of the executive board, if to be discussed at that meeting. [SB -5-100].

How to comply? If action is to be taken by the members on any one of the following items:

1. a proposed amendment to the declaration or bylaws;
2. a proposed budget change; or
3. a proposed removal of a board member or officer;

then, the notice of the meeting must disclose that proposal (either in the notice, or in the attached agenda, or by other means).

b. Posting, Website and Notices by Email

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations. However, the requirement to send email notices of member meetings does not extend to associations or communities that include time share units.

The Law Under The Senate Bills: An association must physically post the notice of any unit owner meeting—annual or special—if feasible and practicable, and must also post the notice on its website (if any) or send out an email to all unit owners if the association has the capacity to send email. [Source: SB 05-100]. **SB 06-89 clarified that this requirement only applies to member meetings and does not apply to board meetings.** [Source: SB 06-89]

How to comply? Associations should adopt and maintain policies, guidelines or rules that specify where physical postings are to occur, if feasible and practicable. Then policies should also identify whether the association maintains a website, and if it does, how posting of member meetings is to occur on the website. Associations should also address in the policies, guidelines or rules, whether the association has the capacity to send email notices to members.

12. Declaration Amendments

a. Limitations on the Application of the 67% Amendment Standard of SB 05-100

Application: Applies to all common interest communities and owner associations subject to CCIOA, including timeshare owner associations and club associations.

The Law Under The Senate Bills: **The 67% level of owner approval (as authorized by SB05-100) for declaration amendments does not apply to:**

- i. **amendments reserved to and executed by the declarant;**
- ii. **certain amendments reserved to and executed by the association;**
- iii. **amendments made by the District Court (pursuant to the court sanctioned petition process authorized in 1999);**
- iv. **amendments within “phased communities” (now a defined term in the statute) or declarant controlled communities;**
- v. **amendments within a community where one owner owns more than 67% of the community; and**
- vi. **amendments that change declarant rights, increase the number of units, or change boundaries (declarant votes are to be excluded).**

[Source: SB 06-89]

How to comply? Amendments to the declaration that would change any of the areas protected must comply with the terms of the declaration (and not the lesser 67% standard allowed under SB 05-100).

- b. The 67% Standard and the Court Sanctioned Amendments through the Petition Process

Application: Applies to all common interest communities and owner associations subject to CCIOA, including timeshare owner associations and club associations.

The Law under the Senate Bills: **The 67% maximum limit for declaration amendments (from SB 05-100) does not preclude an association from seeking court sanctioned approval of a proposed amendment (as allowed in 1999 under SB 99-221) based on the higher standards the declaration may contain.** [Source: SB 06-89]

How to comply? Amendments to the declaration that are expected to be approved through the court sanctioned amendment process can only be begun once at least ½ of the owner approvals required under the express terms of the declaration have been obtained (not when ½ of the 67% approval has been obtained, based on the lower amendment standard authorized under SB 05-100).

- c. Clarification to Declarations that Renew and the 67% Standard

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills: **Declarations with a specific term of existence (i.e., for 20 years), which also provide for automatic renewal or amendment, are allowed to be amended under the procedures set forth in CCIOA (67%, court sanctioned petition, etc.).** [Source: SB 06-89]

How to comply? If the declaration has a term of years and renews automatically based on that term, but is amendable only with 100% of all owners in between terms, then amendments can be obtained at the 67%, or based on the court sanctioned petition process.

d. Mailing and Publication Process to Facilitate Mortgagee Approvals

Application: Applies to all common interest communities and owner associations subject to CCIOA, including timeshare owner associations and club associations.

The Law under the Senate Bills: **The mailing and publication process to obtain mortgagee approval of a proposed declaration amendment has been clarified and is not mandatory.** [Source: SB06-89]

How to comply? The mailing and publication process to obtain mortgagee approval is not required as a part of or pursuant to a proposed amendment.

e. Technical Changes

Application: Applies to all common interest communities and owner associations subject to CCIOA, including timeshare owner associations and club associations.

The Law under the Senate Bills: **Clarification and technical amendments have been made to provisions of the Colorado Common Interest Ownership Act regarding declaration amendments.** [Source: SB-06-89]

How to comply? See SB 06-89 for the technical changes to declaration amendments.

13. Insurance Claims by Owners on Association Policies

a. Owner Claims Allowed, but Subject to Conditions

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations. This part of the Senate Bills is not a part of CCIOA.

The Law under the Senate Bills: A unit owner may continue to file a claim against an association's insurance policy, as if the unit owner were an additional named insured, **but only after conditions added by SB 06-89 have been met.** [Sources: to SB 05-100 and SB 06-89]

How to comply?

Insurance guidelines, policies or rules of the association (similar to the eight required policies) should be adopted and maintained, to restate the conditions, to address who is responsible for deductibles on the association's insurance policies or claims made, and to address owner insurance recommendations.

b. The Conditions

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations. This part of the Senate Bills is not a part of CCIOA.

The Law under the Senate Bills: **The conditions added include:**

- i. **the unit owner has contacted the board or the manager, in writing, and is in compliance with any association guidelines or policies and procedures on owner-initiated insurance claims;**
- ii. **the unit owner has given the association at least 15 days to respond to the unit owner;**
- iii. **if requested, the unit owner has allowed the association's agent a reasonable opportunity to inspect the claimed damage; and**
- iv. **the subject of the claim falls within the association's insurance responsibilities.**

[Source: SB 06-89]

How to comply? While not required by state statutes, owner associations should consider adopting and maintaining guidelines on insurance claims, covering these conditions, deductibles and owner insurance recommendations.

c. Premiums and Request for Clarification of Coverage

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations. This part of the Senate Bills is not a part of CCIOA.

The Law under the Senate Bills: **When determining premiums to be paid for insurance policies, association insurers are not to take into account any request of an owner for a clarification of coverage.** [Source: SB 06-89]

How to comply? If an association's insurance premiums increase, ask the association's insurance agent/broker to confirm the increase is not due to owner inquiries for clarification of insurance coverage.

14. Membership List Restrictions

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills: **Member use of membership lists is restricted. Lists may only be used for purposes related to a unit owner's interest as a unit owner. Commercial use of these lists is prohibited. These restrictions are viewed in the statute as “privacy” restrictions, and cannot be superseded by conflicting provisions in the governing documents.** [Source: SB 06-89]

How to comply?

Adopt and maintain policies, rules or guidelines of the association that restrict uses of membership lists consistent with the state statute.

15. Association Records

a. Fees

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills: **Fees for copies of records of the association may be required in advance.** [Source: SB 06-89]

How to comply? Adopt and maintain association policies, guidelines or rules that allow for advance payment of fees for copies of records. This may be part of the required Records Inspection Policy.

b. Availability

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills: Records requested must be available in 5 days **or at the next regularly scheduled meeting (as long as the meeting is within 30 days of the request).** [Sources: SB 06-89]

How to Comply? If record requests are to be responded to at regular monthly board meetings (which we generally do not recommend) and not as a part of day-to-day business, governance and operation of the association through its managing agent, then adopt and maintain an association policy, guideline or rule that allows for record production at regular monthly board meetings.

c. Required Records and Owner Inspections

Application: Applies to all common interest communities and owner associations subject to CCIOA, including timeshare owner associations and club associations. However, associations/communities that include time share units do not have to maintain a record in a form that allows preparation of a membership list with allocated rates.

The Law under the Senate Bills: Associations must keep certain permanent records (minutes of all board and unit owner meetings; all actions taken by the board, a committee or unit owners by written ballot instead of holding a meeting; and waivers of the notice requirements for unit owner meetings, board member meetings, or committee meetings).

Associations must keep a copy of the following records at its principal office:

- Articles of Incorporation, or if not a corporation, the applicable organizational documents;
- Declaration;
- Covenants;
- Bylaws;
- Board resolutions affecting unit owners;
- Minutes of all unit owner meetings and records of any actions taken by unit owners without a meeting in the past three years;
- All written communications within the last three years to unit owners generally as unit owners;
- A list of the names and business or home addresses of the current board and its officers;
- The most recent annual report, if any; and
- All financial audits or reviews required or conducted in the last three years.

Association records must be made reasonably available to unit owners for both inspection and copying.

How to comply? Associations should adopt and maintain policies, guidelines or rules consistent with the above.

16. Conflict of Interest Transactions of Board Members with the Association

- a. Permissive nature of these transactions, as allowed under the Nonprofit Corporation Act returns

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units.

The Law under the Senate Bills: Board members are allowed to have a conflict of interest in any action or contract that would financially benefit any board member or party related to a board member, if the requirements of the Nonprofit Corporation Act are complied with. [Sources: SB 05-100 and SB 06-89]

How to comply? The Association's policy on conflicts of interest, required under SB 05-100, should be considered or modified consistent with SB 06-89.

b. Voidable vs. Void

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units.

The Law under the Senate Bills: Under SB 05-100, if the association entered into a contract or other transaction in which a director had a conflict that was not properly disclosed, the transaction was void. Under SB 06-89, if the association enters into a contract or other transaction in which a director has a conflicting interest, the transaction will not be void or set aside if:

- i. **the director's interest is disclosed and a majority of the disinterested directors approve or ratify the transaction; OR**
- ii. **the conflicting interest is disclosed and a majority of the members approve or ratify the transaction; OR**
- iii. **the transaction is fair to the association.**

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

How to comply? Adopt and maintain an association policy, guideline or rule that complies with the requirement to have this policy and that may be as permissive as state law allows, or, if desired, is more restrictive.

17. Standard of Care for Directors Investing Reserve Funds

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills: Directors and officers must meet the standard of care outlined in the Colorado Revised Nonprofit Code when investing association reserve funds. The standard requires directors and officers to act:

- i. **in good faith;**

- ii. **with the care an ordinarily prudent person in a like situation would exercise under similar circumstances; and**
- iii. **in a manner the director or officer reasonably believes to be in the best interest of the association.**

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

Boards are protected by the business judgment rule (that courts will not review board actions, unless there is an alleged breach of duty or the decision lacked a rationale basis) for decisions on the investment of reserves. This protection extends to owner-elected and developer-appointed boards.

[Source: SB 06-89]

How to comply? Adopt and maintain an association policy, guideline or rule consistent with the standards reviewed above.

18. Attorney Fees for Enforcement

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills: Attorney fees for enforcement of the governing documents, or for enforcement of the terms of the Colorado Common Interest Ownership Act (CCIOA), are to be awarded to the prevailing party in any civil action (lawsuit), **without express consideration of claims, defenses, counterclaims, third party claims, etc. and including only lawsuits.** [Source: SB 06-89]

How to comply? Associations can add reasonable attorney fees and costs to collections pursued by the association, and can seek attorney fees and costs on covenant or rule enforcement matters. These options should be restated in the governing documents and in the policies, guidelines or rules of the association.

19. Seller Disclosure of Common Interest Community Required

- a. New CREC Form to be prepared by January 1, 2007

Application: Applies to sale of a unit in all common interest communities, except to sales of time share units.

The Law under the Senate Bills: A new disclosure, effective January 1, 2007, is required by sellers to buyers in common interest communities in purchase contracts of the Colorado Real Estate Commission (CREC). The form of disclosure must be substantially similar to a disclosure included in the statute, is to be in bold faced type and is similar to the disclosure currently required as to special districts in CREC forms. This disclosure does not apply to sale of time shares.

[Source: SB06-89]

How to comply? Associations and their managing agent are not required to disclose the common interest community to buyers. That is the seller's obligation and should be discharged by seller based on forms approved by the Colorado Real Estate Commission.

b. Seller Disclosure to Buyer

Application: The disclosure repealed applied only to sale of units in common interest communities that were not time share units.

The Law under the Senate Bills: A special disclosure required to be given by a seller to a buyer in SB 05-100 (a disclosure statement outlining the buyer's responsibilities and obligations as a member of the association) was repealed. Upon the buyer's request, the seller must provide copies of the governing documents and financial documents, as listed or required in the most recent form of CREC contracts. This disclosure does not apply to sale of time shares.

[Source: SB 06-89]

How to comply? The Association's policies or Managing Agent's policies should set and establish the fee to be charged if the Association provides the records requested by a seller.

c. Limitation on Damage Claims of Buyers

Application: Applies to sale of a unit in all common interest communities, except to sales of time share units.

The Law under the Senate Bills: Damage claims of buyers, for a seller's failure to disclose the above, are limited. [Source: SB06-89]

d. Association's Role in the Seller's Disclosures to a Buyer

Application: Applies to sale of a unit in all common interest communities, except to sales of time share units.

The Law under the Senate Bills: The seller is also to provide to the buyer, or authorize the association to provide to the buyer, upon payment of the association's

fee, various documents for the association and the community pursuant to the most recent form of contract of the Colorado Real Estate Commission.

[Source: SB06-89]

How to comply? If a seller makes a request to the association for documents that the association is required to keep, the association and its managing agent must use best efforts to comply with the request and may charge a fee for the documents provided. The fee should be authorized, and if desired, set in the association's policies, guidelines or rules.

20. Restrictions on Enforcement of Certain Covenants/Rights of Owners to Display the Flag, Service Stars, Political Signs and for Alternative Roofing

a. Xeriscaping Protections

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills:

- i. Any association covenant either restricting or limiting xeriscaping or requiring the primary or exclusive use of turf grass is continued to be declared contrary to public policy. [Source: SB 05-100]
- ii. Associations may not place more procedural requirements on unit owners who seek approval for xeriscaping than already exist in the association's governing documents. [Source: SB 05-100]

How to comply? Associations should review the governing documents to determine whether they contain any unenforceable covenants that restrict or limit xeriscaping or require an extensive use of turf grass. Procedures for approving proposed landscaping plans may not place any additional requirements on owners who wish to use xeriscaping.

b. Landscape Enforcement Limitations

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills: During a period of water use restrictions, associations must suspend any enforcement actions against owners whose landscaping dies as a result of complying with the imposed watering restrictions. [Source: SB 05-100]

How to comply? Associations should adopt and maintain a policy, guideline or rule that defines a "reasonable and practical" time for owners to attempt to revive their grass after

water restrictions are lifted. Associations should abate landscape enforcement action if there are watering restrictions in place.

c. U.S. Flag Displays

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills: Associations may not prohibit unit owners **or residents or occupants** from displaying the American flag on the unit owner's property, in the windows of their units or on their balconies if the display complies with the Federal Flag Code, 4 U.S.C. Sections 4 to 10. [Sources: SB 05-100 and SB 06-89]

How to comply? Associations should consider, if appropriate for their community, adopting and maintaining a flag display policy, guideline or rule.

d. Service Star and Service Flag Displays

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills: Associations may not prohibit owners **or residents or occupants** from displaying a service flag with a star denoting the service of the unit owner, occupant or a member of their immediate family. These displays are allowed for active or reserve military service during a time of war or armed conflict. [Sources: SB 05-100 and SB 06-89]

How to comply? Associations should consider, if appropriate for the community, adopting policies, guidelines or rules or display of service stars and/or service flags.

e. Political Signs Allowed

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills:

- i. Associations may not prohibit the display of political signs **within the boundaries of a unit** by an owner **or residents or occupants** or in the windows of a unit from 45 days before an election to 7 days after the election. [Sources: SB 05-100 and SB 06-89]
- ii. **Size of signs may be regulated, to the lesser of the maximum allowed local government or 36" X 48"** [Source: SB 06-89]

How to comply? Associations should consider, if appropriate for the community, adopting policies, guidelines or rules or the display of political signs.

f. Emergency Vehicles and Parking

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills: Associations may not prohibit the parking of an emergency motor vehicle by **occupants** on a street or driveway, or guest parking area, provided that parking the vehicle can be accomplished without obstructing emergency access or reasonable needs of other owners or occupants to use streets, driveways **and guest parking spaces**. Emergency vehicles are allowed if the unit owner or occupant is required by his or her employer, **if a primary provider of emergency fire, law enforcement, ambulance or emergency medical services**, to have the vehicle at his or her residence during designated times and other requirements are met.

[Sources: SB 05-100 and SB 06-89]

How to comply? Associations should consider, if appropriate for the community, adopting policies, guidelines or rules governing parking and emergency vehicle parking.

g. Restrictions on Tree/Brush Clearing

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills: An association may not prohibit owners from removing vegetation around their homes for fire mitigation purposes as long as the removal complies with a written defensible space plan. [Source: SB 05-100]

How to comply? Associations must allow owners to remove vegetation around their homes if they have a written defensible space plan. If appropriate for the community, adopt policies, guidelines or rules on any required filing of defensible space plans with the association.

h. Cedar Shake Shingles may not be required

Application: Applies to all common interest communities and owner associations subject to CCIOA, including time share owner associations and club associations.

The Law under the Senate Bills: **An association may not require the use of cedar shakes or other flammable roofing materials.** The following provisions of SB 05-100 on cedar shake roofing have been repealed:

- i. associations could not prohibit a unit owner from replacing cedar shakes or any other flammable roofing materials with nonflammable materials;
- ii. declarations or bylaws could specify reasonable standards for the color, appearance and general type of nonflammable roofing materials that may be used; and
- iii. governing documents could not require the use of nonflammable materials that would exceed the cost of replacing the flammable materials for which they are being substituted

[Sources: SB 05-100 and SB 06-89]

How to comply? Associations should not pursue enforcement of covenants or restrictions requiring the use of "cedar shake" roofing or that require the use of any other flammable roofing product.

21. Required Owner Education/Orientation

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units.

The Law Under the Senate Bills:

Once a Year. At least once a year, and at no individual cost to unit owners, associations must provide education to their owners. [Source: SB 05-100]

No additional cost. Any cost associated with providing this education must be accounted for as a common expense. [Source: SB 05-100]

Content of the Education. The content of the provided education must relate to the general operations of the association and the rights and responsibilities of owners, the association and its board members. [Source: SB 05-100]

Discretion. An association's board has the discretion to determine how to comply with this provision. [Source: SB 05-100]

How to Comply? The board must decide how and when it wishes to comply with the requirement that its owners have an opportunity, annually, to receive education on association-related topics. This may include presentations at the annual owners meeting, educational articles in the association newsletter or other flyers, offering a class, having a new homeowner orientation program, posting information on the association website, etc. The association should adopt and maintain an education policy that covers when and how education will be offered to owners.

22. Managing Agent Contracts

Application: Applies to all common interest communities and owner associations subject to CCIOA, except those associations/communities that include time share units.

The Law Under the Senate Bills: Associations must be able to terminate managing agent contracts for cause and without any penalty. These contracts are also subject to renegotiation.

How to comply? Managing agents and associations should review their contracts periodically and keep the contract in compliance with the termination rights of the parties, as required by state statute.

23. Applicability of SB 05-100 and SB 06-89

The applications of the recent changes to CCIOA, within SB 05-100 and SB 06-89, are clarified in SB 06-89. [SB 06-89]