

**PLATS AND MAPS
AND
COLORADO COMMON INTEREST
COMMUNITIES**

**SELECT PROVISIONS ON PLATS AND MAPS
FROM CCIOA**

Updated December 14, 2009

Orten Cavanagh Richmond & Holmes, LLC
Community Association Attorneys

Denver • Phone 720.221.9780 • Fax 720.221.9781
Colorado Springs • Phone 719.457.8420 • Fax 719.457.8419 • Toll Free 888.841.5149
Email: info@ocrhlaw.com • Web: www.ocrhlaw.com

TABLE OF CONTENTS

1. Definition of \Plat – Section 103(22.5)\ \f C \l	1
2. Definition of \Map – Section 103(19.5)\ \f C \l	1
3. Definition of \Declaration – Section 103(13)\ \f C \l.....	1
4. Definition of \Special Declarant Rights – Section 103(29)\ \f C \l.....	1
5. Creation of Common Interest Communities – Section 201	2
6. CCIOA's Primary Provisions on Plats and Maps – Section 209.....	2
7. Contents of Declaration Related to Plats and Maps – Parts of Section 205	4
8. Exercise of Development Rights – Parts of Section 210	4
11. Relocation of Boundaries Between Adjoining Units – Parts of Section 212	4
12. Subdivision of Units – Parts of Section 213	5
13. Easement for Encroachments – Section 214.....	5
9. Amendments to Plats and Maps – Section 120.....	6
10. Amendments to Plats and Maps – Section 217	6

**PLATS AND MAPS
AND
COLORADO COMMON INTEREST COMMUNITIES**

SELECT PROVISIONS ON PLATS AND MAPS FROM CCIOA

CCIOA PROVISIONS ON PLATS AND MAPS

1. Definition of "Plat" – Section 103(22.5). "Plat" means that part of a declaration that is a land survey plat as set forth in section 38-51-106, depicts all or any portion of a common interest community in two dimensions, is executed by a person that is authorized by this title to execute a declaration relating to the common interest community, and is recorded in the real estate records in every county in which any portion of the common interest community is located. A plat and a map may be combined in one instrument.
2. Definition of "Map" – Section 103(19.5). "Map" means that part of a declaration that depicts all or any portion of a common interest community in three dimensions, is executed by a person that is authorized by this title to execute a declaration relating to the common interest community, and is recorded in the real estate records in every county in which any portion of the common interest community is located. A map is required for a common interest community with units having a horizontal boundary. A map and a plat may be combined in one instrument.
3. Definition of "Declaration" – Section 103(13). "Declaration" means any recorded instruments, however denominated, that create a common interest community, including any amendments to those instruments and also including, but not limited to, plats and maps.
4. Definition of "Special Declarant Rights" – Section 103(29). "Special declarant rights" means rights reserved for the benefit of a declarant to perform the following acts as specified in parts 2 and 3 of this article: to complete improvements indicated on plats and maps filed with the declaration; to exercise any development right; to maintain sales offices, management offices, signs advertising the common interest community, and models; to use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community; to make the common interest community subject to a master association; to merge or consolidate a common interest community of the same form of ownership ; or to appoint or remove any officer of the association or any executive board member during any period of declarant control.

5. Creation of Common Interest Communities – Section 201.

- (1) A common interest community may be created pursuant to this article only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name the association and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded.
- (2) In a common interest community with horizontal unit boundaries, a declaration, or an amendment to a declaration, creating or adding units shall include a certificate of completion executed by an independent licensed or registered engineer, surveyor, or architect stating that all structural components of all buildings containing or comprising any units thereby created are substantially completed.

6. CCIOA's Primary Provisions on Plats and Maps – Section 209.

- (1) A plat or map is a part of the declaration and is required for all common interest communities except cooperatives. A map is not required only for a common interest community with units having a horizontal boundary. The requirements of this section shall be deemed satisfied so long as all of the information required by this section is contained in the declaration, a map or a plat, or some combination of any two or all of the three. Each plat or map must be clear and legible. When a map is required under any provision of this article, the map, a plat, or the declaration shall contain a certification that all information required by this section is contained in the declaration, the map or a plat, or some combination of any two or all of the three.
- (2) In addition to meeting the requirements of a land survey plat as set forth in section 38-51-106, each map shall show the following, except to the extent such information is contained in the declaration or on a plat:
 - a) The name and a general schematic plan of the entire common interest community;
 - b) The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;
 - c) A legally sufficient description, which may be of the whole common interest community or any portion thereof, of any real estate subject to development rights and a description of the rights applicable to such real estate;
 - d) The extent of any existing encroachments across any common interest community boundary;

- e) To the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the common interest community;
 - f) The location and dimensions of the vertical boundaries of each unit and that unit's identifying number;
 - g) The location, with reference to established data, of the horizontal boundaries of each unit and that unit's identifying number. Any units in which the declarant has reserved the right to create additional units or common elements, identified appropriately;
 - h) A legally sufficient description of any real estate in which the unit owners will own only an estate for years;
 - i) The distance between noncontiguous parcels of real estate comprising the common interest community; and
 - j) The approximate location and dimensions of limited common elements, including porches, balconies, and patios, other than the limited common elements.
- (3) Unless the declaration provides otherwise, the horizontal boundaries of any part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and maps.
- (4) Upon exercising any development right, the declarant shall record an amendment to the declaration with respect to that real estate reflecting change as a result of such exercise necessary to conform to the requirements of subsections (1), (2), and (4) of this section or new certifications of maps previously recorded if those maps otherwise conform to the requirements of subsections (1), (2), and (4) of this section.
- (5) Any certification of a map required by this article must be made by a registered land surveyor.
- (6) The requirements of a plat or map under this article shall not be deemed to satisfy any subdivision platting requirement enacted by a county or municipality pursuant to Section 30-28-133, C.R.S., Part 1 of Article 23 of Title 31, C.R.S., or a similar provision of a home rule city, nor shall the plat or map requirements under this article be deemed to be incorporated into any subdivision platting requirements enacted by a county or municipality.
- (7) Any plat or map that was recorded on or after July 1, 1998, but prior to July 1, 2007, and that satisfies the requirements of this section in effect on July 1, 2007 is deemed to have satisfied the requirements of this section at the time it was recorded.

7. Contents of Declaration Related to Plats and Maps – Parts of Section 205. The declaration must contain:

(1)(e) In a condominium or planned community, a description, which may be by plat or map, of the boundaries of each unit created by the declaration, including the unit's identifying number; or, in a cooperative, a description, which may be by plat or map, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit.

(1)(f) A description of any limited common elements, other than those specified in section 38-33.3-202 (1) (b) and (1) (d) or shown on the map as provided in section 38-33.3-209 (2)(j), and, in a planned community, any real estate that must become common elements.

(4) A declarant may amend the declaration, a plat, or a map to correct clerical, typographical, or technical errors.

8. Exercise of Development Rights – Section 210(2). Additional development rights not previously reserved may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by section 38-33.3-205 or 38-33.3-206, as the case may be, and, in a condominium or planned community, the plats and maps include all matters required by section 38-33.3-209. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 38-33.3-205 (1) (h).

9. Relocation of Boundaries Between Adjoining Units – Parts of Section 212.

(2) In order to relocate the boundaries between adjoining units, the owners of those units, as the applicant, must submit an application to the executive board, which application shall be executed by those owners and shall include:

(a) The proposed form for amendments to the declaration, including the plats or maps, as may be necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers;

(b) No relocation of boundaries between adjoining units shall be effected without the necessary amendments to the declaration, plats, or maps, executed and recorded pursuant to section 38-33.3-217 (3) and (5).

(3) An amendment to the declaration, bylaws, or plats and maps authorized by this section to be made under this article must be adopted in conformity with the procedures and requirements of the law that applied to the common interest

community at the time it was created and with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers, or privileges permitted by this article, all correlative obligations, liabilities, and restrictions in this article also apply to that person.

- (3) An amendment to the declaration may also be made pursuant to the procedures set forth in section 38-33.3-217(7).

10. Subdivision of Units – Parts of Section 213 (2).

- (2) In order to subdivide a unit, the unit owner of such unit, as the applicant, must submit an application to the executive board, which application shall be executed by such owner and shall include:
 - (a) Evidence that the applicant of the proposed subdivision has complied with all building codes, fire codes, zoning codes, planned unit development requirements, master plans and other applicable ordinances or resolutions adopted and enforced by the local governing body and that the proposed subdivision does not violate the terms of any document evidencing a security interest encumbering the unit;
 - (b) The proposed reallocation of interests, if any;
 - (c) The proposed form for amendments to the declaration, including the plats or maps, as may be necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers;
 - (d) A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the executive board; and
 - (e) Such other information as may be reasonably requested by the executive board.
- (3) No subdivision of units shall be effected without the necessary amendments to the declaration, plats, or maps, executed and recorded pursuant to section 38-33.3-217 (3) and (5).
- (4) All costs and attorney fees incurred by the association as a result of an application shall be the sole obligation of the applicant.

11. Easement for Encroachments – Section 214. To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of

willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and maps.

12. Amendments to Plats and Maps – Section 120.

- (1) In the case of amendments to the declaration, bylaws, or plats and maps of any common interest community created within this state before July 1, 1992, which has not elected treatment under this article pursuant to section 38-33.3-118:
 - (a) If the substantive result accomplished by the amendment was permitted by law in effect prior to July 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this article; and
 - (b) If the substantive result accomplished by the amendment is permitted by this article, and was not permitted by law in effect prior to July 1, 1992, the amendment may be made under this article.

13. Amendments to Plats and Maps – Section 217.

- (1)(a)(I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (a), the declaration, including the plats and maps, may be amended only by the affirmative vote or agreement of unit owners of units to which more than fifty percent of the votes in the association are allocated or any larger percentage, not to exceed sixty-seven percent, that the declaration specifies. Any provision in the declaration that purports to specify a percentage larger than sixty-seven percent is hereby declared void as contrary to public policy, and until amended, such provision shall be deemed to specify a percentage of sixty-seven percent. The declaration may specify a smaller percentage than a simple majority only if all of the units are restricted exclusively to nonresidential use. Nothing in this paragraph (a) shall be construed to prohibit the association from seeking a court order, in accordance with subsection (7) of this section, to reduce the required percentage to less than sixty-seven percent.
- (II) If the declaration provides for an initial period of applicability to be followed time in accordance with subparagraph (I) of this paragraph (a).
- (III) This paragraph (a) shall not apply:
 - (A) To the extent that its application is limited by subsection (4) of this section;
 - (B) To amendments executed by a declarant under section 38-33.3-205 (4) and (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210, or 38-33.3-222;

- (C) To amendments executed by an association under section 38-33.3-107, 37-33.3-206 (4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213 or 38-33.3-218 (11) and (12);
 - (D) To amendments executed by the district court for any county that includes all or any portion of a common interest community under subsection (7) of this section; or
 - (E) To amendments that affect phased communities or declarant-controlled communities.
- (b) (I) If the declaration requires first mortgagees to approve or consent to amendments, but does not set for a procedure for registration or notification of first mortgagees, the association may:
- (A) Send a dated, written notice and a copy of any proposed amendment by certified mail to each first mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof; and
 - (B) Cause the dated notice, together with information on how to obtain a copy of the proposed amendment, to be printed in full at least twice, on separate occasions at least one week apart, in a newspaper of general circulation in the county in which the common interest community is located.
- (II) A first mortgagee that does not deliver to the association a negative response within sixty days after the date of the notice specified in subparagraph (I) of this paragraph (b) shall be deemed to have approved the proposed amendment.
- (III) The notification procedure set forth in this paragraph (b) is not mandatory. If the consent of first mortgagees is obtained without resort to this paragraph (b), and otherwise in accordance with the declaration, the notice to first mortgagees shall be sufficient.
- (2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.
- (3) Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation. An amendment must be indexed in the grantee's index in the name of the

common interest community and the association and in the grantor's index in the name of each person executing the amendment.

(4) (a) Except to the extent expressly permitted or required by other provisions of this article, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit or the allocated interests of a unit, in the absence of a vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by a declarant, are allocated or any larger percentage the declaration specifies. The Declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(b) The sixty-seven-percent maximum percentage stated in paragraph (a) of subsection (1) of this section shall not apply to any common interest community in which one unit owner, by virtue of the declaration, bylaws, or other governing documents of the association, is allocated sixty-seven percent or more of the votes in the association.

(4.5) Except to the extent expressly permitted or required by other provisions of this article, no amendment may change the uses to which any unit is restricted in the absence of a vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(5) Amendments to the declaration required by this article to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) All expenses associated with preparing and recording an amendment to the declaration shall be the sole responsibility of:

(a) In the case of an amendment pursuant to sections 38-33.3-208 (2), 38-33.3-212, and 38-33.3-213, the unit owners desiring the amendment; and

(b) In the case of an amendment pursuant to section 38-33.3-208 (3), 38-33.3-209 (6), or 38-33.3-210, the declarant; and

(c) In all other cases, the association.

(7) (a) The association, acting through its executive board pursuant to section 38-33.3-303 (1), may petition the district court for any county that includes all or any portion of the common interest community for an order amending the declaration of the common interest community if:

- (I) The association has twice sent notice of the proposed amendment to all unit owners that are entitled by the declaration to vote on the proposed amendment or are required for approval of the proposed amendment by any means allowed pursuant to the provisions regarding notice to members in sections 7-121-402 and 7-127-104, C.R.S., of the “Colorado Revised Nonprofit Corporation Act”, Articles 121 to 137 of title 7, C.R.S.;
 - (II) The association has discussed the proposed amendment during at least one meeting of the Association; and
 - (III) Unit owners of units to which are allocated more than fifty percent of the number of consents, approvals, or votes of the association that would be required to adopt the proposed amendment pursuant to the declaration have voted in favor of the proposed amendment.
- (b) A petition filed pursuant to paragraph (a) of this subsection (7) shall include:
- (I) A summary of:
 - (A) The procedures and requirements for amending the declaration that are set forth in the declaration;
 - (B) The proposed amendment to the declaration;
 - (C) The effect of and reason for the proposed amendment, including a statement of the circumstances that make the amendment necessary or advisable;
 - (D) The results of any vote taken with respect to the proposed amendment; and
 - (E) Any other matters that the association believes will be useful to the court in deciding whether to grant the petition; and
 - (II) As exhibits, copies of:
 - (A) The declaration as originally recorded and any recorded amendments to the declaration;
 - (B) The text of the proposed amendment;
 - (C) Copies of any notices sent pursuant to subparagraph (I) of paragraph (a) of this subsection (7); and

- (D) Any other documents that the association believes will be useful to the court in deciding whether to grant the petition.
- (c) Within three days of the filing of the petition, the district court shall set a date for hearing the petition. Unless the court finds that an emergency requires an immediate hearing, the hearing shall be held no earlier than forty-five days and no later than sixty days after the date the association filed the petition.
- (d) No later than ten days after the date for hearing a petition is set pursuant to paragraph (c) of this subsection (7), the association shall:
 - (I) Send notice of the petition by any written means allowed pursuant to the provisions regarding notice to members in sections 7-121-402 and 7-127-104, C.R.S., of the “Colorado Revised Nonprofit Corporation Act”, articles 121 to 137 of title 7, C.R.S., to any unit owner, by first-class mail, postage prepaid or by hand delivery to any declarant, and by first-class mail, postage prepaid, to any lender that holds a security interest in one or more units and is entitled by the declaration or any underwriting guidelines or requirements of that lender or of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration, or the Government National Mortgage Corporation to vote on the proposed amendment. The notice shall include:
 - (A) A copy of the petition which need not include the exhibits attached to the original petition filed with the district court;
 - (B) The date the district court will hear the petition; and
 - (C) A statement that the court may grant the petition and order the proposed amendment to the declaration unless any declarant entitled by the declaration to vote on the proposed amendment, the federal housing administration, the veterans administration, more than thirty-three percent of the unit owners entitled by the declaration to vote on the proposed amendment, or more than thirty-three percent of the lenders that hold a security interest in one or more units and are entitled by the declaration to vote on the proposed amendment file written objections to the proposed amendment with the court prior to the hearing.