

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 08-0351.01 Duane Gall

HOUSE BILL 08-1135

HOUSE SPONSORSHIP

Carroll M.,

SENATE SPONSORSHIP

Hagedorn, and Williams

House Committees
Local Government

Senate Committees
Local Government

A BILL FOR AN ACT

101 CONCERNING COMMON INTEREST COMMUNITIES, AND, IN CONNECTION
102 THEREWITH, INVALIDATING COVENANTS THAT PROHIBIT
103 BUILDING MODIFICATIONS TO ACCOMMODATE PERSONS WITH
104 DISABILITIES, REQUIRING DUE PROCESS IN PENALTY ASSESSMENT
105 PROCEDURES, AND PROVIDING FOR ALTERNATIVE DISPUTE
106 RESOLUTION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Invalidates covenants, rules, or policies of common interest communities (CICs) that prohibit reasonable modifications of a structure

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Am ended 2nd Reading
March 26, 2008

HOUSE
3rd Reading Unam ended
January 25, 2008

HOUSE
Am ended 2nd Reading
January 24, 2008

as necessary to allow access by persons with disabilities in accordance with federal law.

Requires CICs to adopt and follow written policies for the imposition of fines on unit owners that, at a minimum:

- ! Create a fair and impartial method for determining whether a violation of the covenants actually occurred and whether the unit owner is responsible for the violation; and
- ! Provide the unit owner notice and an opportunity to be heard before an impartial decision maker.

In existing law encouraging alternative dispute resolution (ADR), adds specific statutory references to available public and private ADR resources, including the office of dispute resolution established by the Colorado judicial branch.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 38-33.3-106.5 (1), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4 **38-33.3-106.5. Prohibitions contrary to public policy -**
5 **patriotic and political expression - emergency vehicles - fire**
6 **prevention - definitions.** (1) Notwithstanding any provision in the
7 declaration, bylaws, or rules and regulations of the association to the
8 contrary, an association shall not prohibit any of the following:

9 (g) REASONABLE MODIFICATIONS TO A UNIT OR TO COMMON
10 ELEMENTS AS NECESSARY TO AFFORD A PERSON WITH DISABILITIES FULL
11 USE AND ENJOYMENT OF THE UNIT IN ACCORDANCE WITH THE FEDERAL
12 "FAIR HOUSING ACT OF 1968", 42 U.S.C. SEC. 3604 (f) (3) (A).

13 **SECTION 2.** 38-33.3-209.5, Colorado Revised Statutes, is
14 amended BY THE ADDITION OF THE FOLLOWING NEW
15 SUBSECTIONS to read:

16 **38-33.3-209.5. Responsible governance policies - due process**
17 **for imposition of fines.** (2) NOTWITHSTANDING ANY PROVISION OF THE
18 DECLARATION, BYLAWS, ARTICLES, OR RULES AND REGULATIONS TO THE

1 CONTRARY, THE ASSOCIATION MAY NOT FINE ANY UNIT OWNER FOR AN
2 ALLEGED VIOLATION UNLESS:

3 (a) THE ASSOCIATION HAS ADOPTED, AND FOLLOWS, A WRITTEN
4 POLICY GOVERNING THE IMPOSITION OF FINES; AND

5 (b) (I) THE POLICY INCLUDES A FAIR AND IMPARTIAL FACTFINDING
6 PROCESS CONCERNING WHETHER THE ALLEGED VIOLATION ACTUALLY
7 OCCURRED AND WHETHER THE UNIT OWNER IS THE ONE WHO SHOULD BE
8 HELD RESPONSIBLE FOR THE VIOLATION. THIS PROCESS MAY BE INFORMAL
9 BUT SHALL, AT A MINIMUM, GUARANTEE THE UNIT OWNER NOTICE AND AN
10 OPPORTUNITY TO BE HEARD BEFORE AN IMPARTIAL DECISION MAKER. ==

11 (II) AS USED IN THIS PARAGRAPH (b), "IMPARTIAL DECISION
12 MAKER" MEANS A PERSON OR GROUP OF PERSONS WHO HAVE THE
13 AUTHORITY TO MAKE A DECISION REGARDING THE ENFORCEMENT OF THE
14 ASSOCIATION'S COVENANTS, CONDITIONS, AND RESTRICTIONS, INCLUDING
15 ITS ARCHITECTURAL REQUIREMENTS, AND THE OTHER RULES AND
16 REGULATIONS OF THE ASSOCIATION AND DO NOT HAVE ANY DIRECT
17 PERSONAL OR FINANCIAL INTEREST IN THE OUTCOME. A DECISION MAKER
18 SHALL NOT BE DEEMED TO HAVE A DIRECT PERSONAL OR FINANCIAL
19 INTEREST IN THE OUTCOME IF THE DECISION MAKER WILL NOT, AS A
20 RESULT OF THE OUTCOME, RECEIVE ANY GREATER BENEFIT OR DETRIMENT
21 THAN WILL THE GENERAL MEMBERSHIP OF THE ASSOCIATION.

22 (3) IF, AS A RESULT OF THE FACTFINDING PROCESS DESCRIBED IN
23 SUBSECTION (2) OF THIS SECTION, IT IS DETERMINED THAT THE UNIT
24 OWNER SHOULD NOT BE HELD RESPONSIBLE FOR THE ALLEGED VIOLATION,
25 THE ASSOCIATION SHALL NOT ALLOCATE TO THE UNIT OWNER'S ACCOUNT
26 WITH THE ASSOCIATION ANY OF THE ASSOCIATION'S COSTS OR ATTORNEY
27 FEES INCURRED IN ASSERTING OR HEARING THE CLAIM.

1 NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS, OR
2 RULES AND REGULATIONS OF THE ASSOCIATION TO THE CONTRARY, A UNIT
3 OWNER SHALL NOT BE DEEMED TO HAVE CONSENTED TO PAY SUCH COSTS
4 OR FEES.

5 **SECTION 3.** 38-33.3-124, Colorado Revised Statutes, is
6 amended to read:

7 **38-33.3-124. Legislative declaration - alternative dispute**
8 **resolution encouraged - policy statement required.** (1) (a) (I) The
9 general assembly finds and declares that the cost, complexity, and delay
10 inherent in court proceedings make litigation a particularly inefficient
11 means of resolving neighborhood disputes. Therefore, common interest
12 communities are encouraged to adopt protocols that make use of
13 mediation or arbitration as alternatives to, or preconditions upon, the
14 filing of a complaint between a unit owner and association in situations
15 that do not involve an imminent threat to the peace, health, or safety of
16 the community.

17 (II) THE GENERAL ASSEMBLY HEREBY SPECIFICALLY ENDORSES
18 AND ENCOURAGES ASSOCIATIONS, UNIT OWNERS, MANAGERS,
19 DECLARANTS, AND ALL OTHER PARTIES TO DISPUTES ARISING UNDER THIS
20 ARTICLE TO AGREE TO MAKE USE OF ALL AVAILABLE PUBLIC OR PRIVATE
21 RESOURCES FOR ALTERNATIVE DISPUTE RESOLUTION, INCLUDING,
22 WITHOUT LIMITATION, THE RESOURCES OFFERED BY THE OFFICE OF
23 DISPUTE RESOLUTION WITHIN THE COLORADO JUDICIAL BRANCH THROUGH
24 ITS WEB SITE.

25 (b) On or before January 1, 2007, each association shall adopt a
26 written policy setting forth its procedure for addressing disputes arising
27 between the association and unit owners. The association shall make a

1 copy of this policy available to unit owners upon request.

2 (2) (a) Any controversy between an association and a unit owner
3 arising out of the provisions of this article may be submitted to mediation
4 by either party to the controversy AGREEMENT OF THE PARTIES prior to the
5 commencement of any legal proceeding.

6 (b) The mediation agreement, if one is reached, may be presented
7 to the court as a stipulation. Either party to the mediation may terminate
8 the mediation process without prejudice.

9 (c) If either party subsequently violates the stipulation, the other
10 party may apply immediately to the court for relief.

11 (3) The declaration, bylaws, or rules of the association may
12 specify situations in which disputes shall be resolved by binding
13 arbitration under the "Uniform Arbitration Act", part 2 of article 22 of
14 title 13, C.R.S., OR BY ANOTHER MEANS OF ALTERNATIVE DISPUTE
15 RESOLUTION UNDER THE "DISPUTE RESOLUTION ACT", PART 3 OF ARTICLE
16 22 OF TITLE 13, C.R.S.

17 **SECTION 4. Effective date - applicability.** This act shall take
18 effect July 1, 2008, and shall apply to acts occurring on or after said date.

19 **SECTION 5. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.