



HindmanSanchez

SB 89 AMENDMENTS TO SB 100

Last Updated: June 8, 2006

CCIOA PROVISIONS

| | SB-100 Provisions | SB-89 Changes & CCIOA Citation <i>(effective May 26, 2006 unless otherwise noted)</i> | Association Action Required or Advised? |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| 1 | Allows display of American or military service flag and political signs on a unit owner's property | Extends right to display flag and political signs to occupants* [38-33.3-106.5(1)(a)-(c)] | If association chose to adopt, revise procedures regulating flags/flagpoles. |
| 2 | If no applicable local ordinance exists, displayed political signs may measure up to 38" x 48". | Limits size of political signs to the smaller of the size allowed by local ordinance or 38"x48" [38-33.3-106.5(1)(c)(II)] | If association chose to adopt, association may revise procedures regulating political signs. |
| 3 | Right to park emergency vehicle by a unit owner 38-33.3-106.5(1)(d) | Right applies to all occupants* [38-33.3-106.5(d)] | If association chose to adopt, revise emergency vehicle parking policy and procedure |
| 4 | Defines emergency service provider as a primary provider of emergency fire fighting, law enforcement, ambulance, emergency medical, or other emergency services | Removes the phrase "other emergency services" and defines emergency services providers as emergency fire fighting, law enforcement, ambulance, and emergency medical services only [38-33.3-106.5(1)(d)(II)] | If association chose to adopt, association may revise emergency vehicle parking policy and procedure |
| 5 | Prohibits parked emergency vehicles from unreasonably interfering with the use of streets and driveways | Includes guest parking spaces [38-33.3-106.5(1)(d)(IV)] | If association chose to adopt, association may revise emergency vehicle parking policy and procedure |
| 6 | Allows owners to replace cedar shakes or other flammable roofing materials with nonflammable materials | Prohibits the association from requiring the use of cedar shakes or other flammable roofing materials [38-33.3-106.5(2)] | None |

* "Occupant" is not defined by the statute. However, a reasonable interpretation is that the phrase means renters or other individuals residing in the unit on a permanent basis.

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| 7 | Associations may specify nonflammable roofing materials to be used to replace flammable roofing materials but specified materials cannot be more expensive than replacing roof with original flammable material | Removes any reference to cost limitation on roofing materials specified by the association [38-33.3-106.5(2)] | Associations with buildings with flammable roofing materials should adopt regulations specifying what type of nonflammable roofing materials may be used. |
| 8 | Attorney fees to prevailing party on a claim-by-claim basis | Attorney fees to a prevailing party in a civil action [38-33.3-123(1)(c)] | None |
| 9 | Encourages alternative dispute resolution | Requires association to adopt a policy by January 1, 2007 addressing procedure for disputes between owners and the association [38-33.3-124(1)(b)] | Adopt a policy by January 1, 2007 |
| 10 | Annual disclosures required | Association must make specified information available within 90 days of assuming control from declarant upon reasonable notice [38-33.3-209.4] | None |
| 11 | Must disclose any audit/review for previous fiscal year | Revised to most recent available financial audit or review [38-33.3-209.4(2)(e)] | None |
| 12 | Maintain accounting records using generally accepted accounting principals | Maintain accurate and complete accounting records [38-33.3-209.5(1)(a)] | None |
| 13 | Must disclose required responsible governance policies | Must add ADR policy to this disclosure [38-33.3-209.5(1)(b)(VIII)] | None |
| 14 | 67% cap for owners approval to amendments | Clarifies association may seek court order to further reduce percentage to less than 67% [38-33.3-217(1)(a)(I)] | None |
| 15 | N/A | Clarifies that declaration providing for an initial term of applicability followed by automatic extension periods for a designated number of years may amend their declaration during any of these specified periods [38-33.3-217(1)(a)(II)] | None |

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| 16 | Provides procedure to deem first mortgagee approval of amendments to the declaration | Clarifies that procedure is not mandatory [38-33.3-217(4)(b)] | None |
| 17 | 67% cap for owners approval to amendments | Exempts communities in which one owner is allocated more than 67% of the association's votes [38-33.3-217(1)(a)(III)(E)] | None |
| 18 | 67% cap for owners approval to amendments | Exempts declarant controlled communities and phased communities* [38-33.3-217(1)(b)(III)] | None |
| 19 | Seller disclosures to buyer 38-33.3-223 | Repealed | None |
| 20 | N/A | Board of Directors bound by standard of conduct in Nonprofit Code with respect to investment of reserves (7-128-401) [38-33.3-303(2.5)] | Revise SB 100 required policy concerning investment of reserves |
| 21 | Audit or review every two years | Audit or review required only if certain conditions are met Audit required if 1) association has annual revenue or expenditures of \$250,000 or more and 2) 1/3 of the owners request Review required if 1/3 of owners request that one be performed [38-33.3-303(4)(b)(I)-(III)] | None |
| 22 | N/A | Review to be performed by an individual with a basic understanding of accounting from prior business experience, education above the high school level, or bona fide home study. [38-33.3-303(4)(b)(I)] | None |
| 23 | N/A | Clarifies that association financial statements must be prepared by using GAAP or the cash or tax basis of accounting [38-33.3-303(4)(b)(I)] | None |

* The statute defines phased community as a “common interest community in which declarant retains development rights.”

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| 24 | Unit owners must be allowed to speak before the board takes formal action on a matter at a board meeting | Clarifies that owners have right to speak before the board votes on an issue, at a time determined by the board. Owners speaking are still subject to the board's reasonable limitations on number of individuals speaking and allotted speaking time. [38-33.3-308(2.5)(b)] | If desired, revise SB 100 required policy concerning conduct of meetings |
| 25 | Secret ballots for all board member elections | Secret ballots for contested elections, at board's discretion, or if requested by 20% of owners present at the meeting or represented by proxy [38-33.3-310(1)(b)(I)(A)] | If desired, revise SB 100 required policy concerning conduct of meetings |
| 26 | Secret ballots for all other votes at the request of one owner | Secret ballots for all other votes at the request of 20% of owners present at the meeting or represent by proxy [38-33.3-310(1)(b)(I)(B)] | If desired, revise SB 100 required policy concerning conduct of meetings |
| 27 | Ballots must be counted by neutral third party or non-candidate owners | Secret ballots must be counted by a neutral third party or committee of volunteer unit owners who are not Board members and, in case of contested elections, candidates [38-33.3-310(1)(b)(I)(C)] | If desired, revise SB 100 required policy concerning conduct of meetings |
| 28 | Secret ballot required for all associations | Exempts secret ballot requirement for associations with delegate districts [38-33.3-310(1)(b)(I)(A)] | If desired or applicable, revise SB 100 required policy concerning conduct of meetings |
| 29 | Board member with conflict of interest must disclose conflict and shall not vote on the matter | Board member shall disclose conflict and may vote; Cross reference Non-Profit Act: 7-128-501 [38-33.3-310.5(1)] | If desired, revise SB 100 required policy concerning board member conflicts of interest to allow board member to vote after disclosing conflict |
| 30 | Any contract in violation of conflicts of interest is void | Conflicting interest transaction is not voidable by an owner or on behalf of the association if: <ul style="list-style-type: none"> • Disclosures are made to Board of Directors and Board authorizes, approves or ratifies • Disclosure to owners and owners approve, etc.; or • Transaction is fair to association [38-33.3-310.5(1)] [citing to Nonprofit Act] | Revise SB 100 required policy concerning board member conflicts of interest |

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| 31 | Owners may inspect and copy association records | Membership list may not be used by a person for a purpose unrelated to the owner's interest as an owner without the consent of the Board of Directors [38-33.3-317(2)(b)] | Revise SB 100 required policy concerning owner record inspection and copying |
| 32 | Association may charge a fee for actual copying costs | Clarifies the association may collect the actual cost* of copying association documents in advance [38-33.3-317(3)] | If desired, revise SB 100 required policy concerning owner record inspection and copying |
| 33 | Association records must be made reasonably available during normal business hours, with 5 business days notice | Adds to definition of reasonably available to include 5 business days notice or the next regularly scheduled meeting, if occurring within 30 days of request [38-33.3-317(4)] | If desired, revise SB 100 required policy concerning owner record inspection and copying |

* "Actual costs" is not defined in the statute. A reasonable interpretation is that "actual costs" include the costs of personnel time taken to produce and copy the records in addition to the cost of copying materials like paper and toner.

NON-CCIOA PROVISIONS

| | SB-100 Provisions | SB-89 Changes & Statutory Citation <i>(effective May 26, 2006 unless otherwise noted)</i> | Actions Needed by Association |
|---|----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Seller disclosure statement must be signed by buyer | <p>On or after 1/1/2007, sales contracts must contain disclosure statement.</p> <p>Wording in disclosure statement changed to include:</p> <ul style="list-style-type: none"> • Property is in CIC • Required membership • Subject to documents and rules and regulations • Obligation to pay assessments and consequences for failure to pay • Architectural review requirements <p>[38-35.7-102(1)]</p> | None |
| 2 | Seller must provide disclosure statement and documents | <p>At buyer's request, seller must provide documents or authorize association to provide the documents. Association may charge its actual costs* for providing documents to buyer on seller's authorization.</p> <p>[38-35.7-102(2)(a)]</p> | If association chose to adopt, revise procedures to be used by association in cooperating owners selling units |
| 3 | Owners right to file claim against association's insurance as if owners were an additional insured | <p>Right to file claim as a named insured if:</p> <ul style="list-style-type: none"> • Owner writes Board of Directors regarding subject matter • Board of Directors has 15 days to respond in writing • If requested, Owner must allow Board of Directors reasonable opportunity to inspect damages • "Subject matter of claim" is within association's insurance responsibilities <p>[10-4-110.8(5)(a)]</p> | <p>If association chose to adopt, it should revise procedures for claims submissions to association's insurance carrier.</p> <p>To define what would circumstances would be a subject matter within an association's insurance responsibilities, associations should have a maintenance & insurance chart created, which defines the association's maintenance and insurance responsibilities as provided for in the declaration.</p> |

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|---|--------------------------|---------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| 4 | N/A | Owners inquiries regarding clarification of coverage can not affect association's premium [10-4-110.8(5)(b)] | None |