

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 11-0327.01 Duane Gall

HOUSE BILL 11-1110

HOUSE SPONSORSHIP

Acree, Balmer, Holbert, Massey, Murray, Solano

SENATE SPONSORSHIP

Harvey, Carroll, Renfroe

House Committees

Economic and Business Development

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE RIGHTS OF MEMBERS OF NONPROFIT CORPORATIONS**
102 **IN WHICH RESIDENCY IS A QUALIFICATION FOR MEMBERSHIP.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Current laws governing common interest communities give homeowners the right to attend meetings of the executive board, to receive notice of such meetings, and to have a reasonable opportunity to speak concerning matters that the board will take action on. However, these provisions do not currently apply to nonprofit corporations that

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.

operate residential housing developments, including retirement communities, in which membership is offered to persons who reside in the development.

Section 1 of the bill defines terms. **Section 3** adopts provisions similar to those governing common interest communities, requiring all residential members of a residential nonprofit corporation to be given notice of board of directors meetings, to attend, and to have a reasonable opportunity to speak concerning matters that the board will take action on. The bill allows the board to go into executive session to discuss specific topics such as personnel matters, pending litigation, and matters involving the personal privacy of individuals. The board is prohibited from making changes to the articles of incorporation or bylaws in an executive session.

Section 2 of the bill requires a residential nonprofit corporation to refund the entrance fee to a residential member or his or her estate within 90 days after the member ceases to be a residential member, and absolves the member and his or her heirs of liability for periodic payments after 30 days if the termination of the membership was due to the member's death or other reasons beyond his or her control.

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

2 **SECTION 1.** 7-121-401, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to
4 read:

5 **7-121-401. General definitions.** As used in articles 121 to 137
6 of this title, unless the context otherwise requires:

7 (16.5) "ENTRANCE FEE" MEANS ANY FEE OR CHARGE, INCLUDING
8 A DAMAGE DEPOSIT, PAID BY A PERSON TO A RESIDENTIAL NONPROFIT
9 CORPORATION IN ORDER TO BECOME A RESIDENT MEMBER. "ENTRANCE
10 FEE" DOES NOT INCLUDE REGULAR PERIODIC PAYMENTS FOR THE
11 PURCHASE OR LEASE OF RESIDENTIAL REAL ESTATE OR FOR THE
12 DAY-TO-DAY USE OF FACILITIES OR SERVICES.

13 (32.5) "RESIDENTIAL MEMBER" MEANS A MEMBER OF A
14 RESIDENTIAL NONPROFIT CORPORATION WHOSE STATUS AS A MEMBER IS

1 DEPENDENT UPON, OR WHOSE MEMBERSHIP IS ACCORDED VOTING RIGHTS
2 AS A RESULT OF, OWNING OR LEASING SPECIFIED RESIDENTIAL REAL
3 ESTATE.

4 (33.5) "RESIDENTIAL NONPROFIT CORPORATION" MEANS A
5 NONPROFIT CORPORATION THAT HAS RESIDENTIAL MEMBERS.

6 **SECTION 2.** Part 3 of article 126 of title 7, Colorado Revised
7 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
8 read:

9 **7-126-304. Residential membership - return of consideration**
10 **- cessation of periodic payments - time limits.** (1) NOTWITHSTANDING
11 ANY PROVISION OF THE ARTICLES OF INCORPORATION OR BYLAWS TO THE
12 CONTRARY:

13 (a) A RESIDENTIAL NONPROFIT CORPORATION SHALL REFUND THE
14 ENTRANCE FEE OF A RESIDENTIAL MEMBER TO THE MEMBER OR HIS OR HER
15 HEIRS WITHIN NINETY DAYS AFTER THE MEMBER'S RESIGNATION,
16 TERMINATION, EXPULSION, OR SUSPENSION FROM THE CORPORATION OR
17 THE TRANSFER OF THE RESIDENTIAL MEMBERSHIP.

18 (b) IF THE MEMBERSHIP OF A RESIDENTIAL MEMBER IS TERMINATED
19 DUE TO THE MEMBER'S DEATH OR FOR ANY OTHER REASON BEYOND THE
20 MEMBER'S CONTROL, THE MEMBER OR HIS OR HER HEIRS ARE NOT LIABLE
21 FOR ANY PERIODIC PAYMENTS COMING DUE MORE THAN THIRTY DAYS
22 AFTER THE EFFECTIVE DATE OF THE TERMINATION.

23 **SECTION 3.** 7-128-203, Colorado Revised Statutes, is amended
24 BY THE ADDITION OF A NEW SUBSECTION to read:

25 **7-128-203. Notice of meeting - rights of residential members.**
26 (3) NOTWITHSTANDING SUBSECTIONS (1) AND (2) OF THIS SECTION, AND
27 NOTWITHSTANDING ANY PROVISION OF THE ARTICLES OF INCORPORATION

1 OR BYLAWS TO THE CONTRARY, THE FOLLOWING RULES AND PROCEDURES
2 APPLY TO MEETINGS OF THE BOARD OF DIRECTORS OF A RESIDENTIAL
3 NONPROFIT CORPORATION OR ANY COMMITTEE OF THE BOARD:

4 (a) (I) ALL REGULAR AND SPECIAL MEETINGS OF THE RESIDENTIAL
5 NONPROFIT CORPORATION'S BOARD OF DIRECTORS, OR ANY COMMITTEE OF
6 THE BOARD, MUST BE OPEN TO ATTENDANCE BY ALL RESIDENTIAL
7 MEMBERS OR THEIR REPRESENTATIVES. THE BOARD SHALL MAKE
8 AGENDAS FOR MEETINGS OF THE BOARD REASONABLY AVAILABLE FOR
9 EXAMINATION BY ALL RESIDENTIAL MEMBERS OR THEIR
10 REPRESENTATIVES.

11 (II) THE RESIDENTIAL NONPROFIT CORPORATION IS ENCOURAGED
12 TO PROVIDE ALL NOTICES AND AGENDAS REQUIRED BY THIS ARTICLE IN
13 ELECTRONIC FORM, BY POSTING ON A WEB SITE OR OTHERWISE, IN
14 ADDITION TO PRINTED FORM. IF SUCH ELECTRONIC MEANS ARE
15 AVAILABLE, THE CORPORATION SHALL PROVIDE NOTICE OF ALL REGULAR
16 AND SPECIAL MEETINGS OF RESIDENTIAL MEMBERS BY ELECTRONIC MAIL
17 TO ALL RESIDENTIAL MEMBERS WHO SO REQUEST AND WHO FURNISH THE
18 CORPORATION WITH THEIR ELECTRONIC MAIL ADDRESSES. ELECTRONIC
19 NOTICE OF A SPECIAL MEETING MUST BE GIVEN AS SOON AS POSSIBLE BUT
20 AT LEAST TWENTY-FOUR HOURS BEFORE THE MEETING.

21 (b) AT AN APPROPRIATE TIME DETERMINED BY THE BOARD OF
22 DIRECTORS, BUT BEFORE THE BOARD VOTES ON AN ISSUE UNDER
23 DISCUSSION, THE BOARD SHALL PERMIT RESIDENTIAL MEMBERS OR THEIR
24 DESIGNATED REPRESENTATIVES TO SPEAK REGARDING THE ISSUE. THE
25 BOARD MAY PLACE REASONABLE TIME RESTRICTIONS ON PERSONS
26 SPEAKING DURING THE MEETING. IF MORE THAN ONE PERSON DESIRES TO
27 ADDRESS AN ISSUE AND THERE ARE OPPOSING VIEWS, THE BOARD SHALL

1 PROVIDE FOR A REASONABLE NUMBER OF PERSONS TO SPEAK ON EACH SIDE
2 OF THE ISSUE.

3 (c) THE BOARD OF DIRECTORS OR ANY COMMITTEE OF THE BOARD
4 MAY HOLD AN EXECUTIVE OR CLOSED-DOOR SESSION AND MAY RESTRICT
5 ATTENDANCE TO BOARD MEMBERS AND SUCH OTHER PERSONS REQUESTED
6 BY THE BOARD DURING A REGULAR OR SPECIALLY ANNOUNCED MEETING
7 OR A PART THEREOF. THE MATTERS TO BE DISCUSSED AT SUCH AN
8 EXECUTIVE SESSION MAY INCLUDE ONLY MATTERS ENUMERATED IN
9 PARAGRAPH (d) OF THIS SUBSECTION (3).

10 (d) MATTERS FOR DISCUSSION BY AN EXECUTIVE OR CLOSED
11 SESSION ARE LIMITED TO:

12 (I) MATTERS PERTAINING TO EMPLOYEES OF THE RESIDENTIAL
13 NONPROFIT CORPORATION OR THE MANAGING AGENT'S CONTRACT OR
14 INVOLVING THE EMPLOYMENT, PROMOTION, DISCIPLINE, OR DISMISSAL OF
15 AN OFFICER, AGENT, OR EMPLOYEE OF THE CORPORATION;

16 (II) CONSULTATION WITH LEGAL COUNSEL CONCERNING DISPUTES
17 THAT ARE THE SUBJECT OF PENDING OR IMMINENT COURT PROCEEDINGS OR
18 MATTERS THAT ARE PRIVILEGED OR CONFIDENTIAL BETWEEN ATTORNEY
19 AND CLIENT;

20 (III) INVESTIGATIVE PROCEEDINGS CONCERNING POSSIBLE OR
21 ACTUAL CRIMINAL MISCONDUCT;

22 (IV) MATTERS SUBJECT TO SPECIFIC CONSTITUTIONAL,
23 STATUTORY, OR JUDICIALLY IMPOSED REQUIREMENTS PROTECTING
24 PARTICULAR PROCEEDINGS OR MATTERS FROM PUBLIC DISCLOSURE;

25 (V) ANY MATTER THE DISCLOSURE OF WHICH WOULD CONSTITUTE
26 AN UNWARRANTED INVASION OF INDIVIDUAL PRIVACY;

27 (VI) REVIEW OF OR DISCUSSION RELATING TO ANY WRITTEN OR

1 ORAL COMMUNICATION FROM LEGAL COUNSEL.

2 (e) UPON THE FINAL RESOLUTION OF ANY MATTER FOR WHICH THE
3 BOARD OF DIRECTORS RECEIVED LEGAL ADVICE OR THAT CONCERNED
4 PENDING OR CONTEMPLATED LITIGATION, THE BOARD MAY ELECT TO
5 PRESERVE THE ATTORNEY-CLIENT PRIVILEGE IN ANY APPROPRIATE
6 MANNER, OR IT MAY ELECT TO DISCLOSE SUCH INFORMATION, AS IT DEEMS
7 APPROPRIATE, ABOUT SUCH MATTER IN AN OPEN MEETING.

8 (f) BEFORE THE BOARD OF DIRECTORS OR ANY COMMITTEE OF THE
9 BOARD CONVENES IN EXECUTIVE SESSION, THE CHAIR OF THE BODY SHALL
10 ANNOUNCE THE GENERAL MATTER OF DISCUSSION AS ENUMERATED IN
11 PARAGRAPH (d) OF THIS SUBSECTION (3).

12 (g) THE BOARD OF DIRECTORS SHALL NOT ADOPT ANY CHANGE TO
13 THE RESIDENTIAL NONPROFIT CORPORATION'S ARTICLES OF
14 INCORPORATION OR BYLAWS DURING AN EXECUTIVE SESSION. AN
15 ARTICLES OF INCORPORATION OR BYLAW CHANGE MAY BE VALIDLY
16 ADOPTED ONLY DURING A REGULAR OR SPECIAL MEETING OR AFTER THE
17 BOARD OF DIRECTORS GOES BACK INTO REGULAR SESSION FOLLOWING AN
18 EXECUTIVE SESSION.

19 (h) THE MINUTES OF ALL MEETINGS AT WHICH AN EXECUTIVE
20 SESSION WAS HELD MUST INDICATE THAT AN EXECUTIVE SESSION WAS
21 HELD AND THE GENERAL SUBJECT MATTER OF THE EXECUTIVE SESSION.

22 **SECTION 4. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.