

FAQ's
on
Amendments to Declarations
of
Colorado Common Interest Communities

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on
Amendments to Declarations of Colorado Common Interest Communities

How can declarations in common interest communities be amended?

Answer: Several ways.

1. By complying with the terms of the declaration that govern amendment.
2. If the terms of the declaration governing amendment set an approval or vote requirement of over 67% of the owners, or over 67% of the votes of owners, then state statutes allow that higher percentage to be reduced to 67%.
3. If the terms of the declaration require mortgagee consents or votes for an amendment, state statutes allow a procedure where mortgagee approval is deemed given in the absence of a negative response (after a mailing and publication in a local newspaper).
4. If the percentage of owners required under the declaration (versus the 67% allowed by state statutes) cannot be obtained, then a petition to the court process may be pursued, provided at least 1/2 of the owners' votes (or approval requirement under the declaration) is first obtained and other requirements of state statutes are met.

How do I find out what the amendment requirements of the declaration are?

Answer: By following these steps:

1. Review the entire declaration. Amendment authority is usually in at least one place in the declaration, but can often be in 2, 3 or even 4 places.
2. Review all applicable declaration provisions to determine the amendment requirements of the declaration.
3. Compare the amendment requirements of the declaration to the statutory changes Colorado has made that may lessen these requirements.
4. Review the applicable requirements of the Colorado Common Interest Ownership Act (under sections 120 and 217).

How do I find out what the statutory provisions of Colorado law are?

Answer: For Colorado common interest communities (those with mandatory assessments) that are not exempt from the Colorado Common Interest Ownership Act (CCIOA), the statutory provisions are in parts of CCIOA. See Sections 1 and 7 of Section 217 of CCIOA and Section 120 of CCIOA.

When should an association or owner in an association seek or consider declaration amendments?

Answer: Whenever necessary or appropriate to keep the declaration current and/or relevant, to eliminate declarant provisions, to clear up possible ambiguities or conflicting terms, to allow for efficient governance, etc.

How does an Association get a proposed declaration amendment approved?

Answer: Through outreach by the board, any committee involved and management is recommended.

Getting proposed declaration amendments approved is a political effort, and all that has been learned from political campaigns is applicable.

One of the best tactics in successful political campaigns is door-to-door campaigning. In that fashion, the candidate has personal communications with voters, asks for their vote and listens to their concerns.

If door-to-door campaigning is feasible in your Community, consider it. If not, consider having board members and/or committee member's phone or email owners.

Whether going door-to-door, emailing or phoning, those seeking approval of the proposed amendments should be diligent. Introduce yourself and your position in the Association, explain what you are doing, and early on in the conversation, ask for a vote in favor of the proposed amendments. Then, listen to the owner. Let them share all that they may want to comment on about the community, the board, management, etc. Then, advise them you will share their comments with the leaders of the Community and management, as the goal of the Association is to preserve and enhance the values of the properties of the owners. Then, ask again if you can count on their vote in favor. As the saying goes, you don't usually get what you do not ask for. So, ask for that vote.

As political input is gathered, share what you learn with each of the other volunteers in leadership and with the Association Manager.

Outreach will greatly increase the odds of the proposed amendments being approved and will give all in leadership and management insight into the perspectives and areas owners and residents are concerned about.

As outreach is ongoing, the Association may need to change its approach to seeking approval of proposed amendments, and/or may need to revise the proposal to meet concerns of owners.

Even though the proposed amendments may be supported by the minimum number of owners needed, that is not enough. It is their affirmative vote or consent that is needed. To get to that minimum, and preferably more than the minimum, communications are key.

Communications should be continued, if the amendments are approved. Communications after approval are important to obtain compliance with the amendment. Even then, communications after voluntary compliance is obtained remains important, but is expected to be back into the normal or near-normal flow of information.

How can a court authorize declaration amendment?

Answer: In 1999, the Colorado General Assembly and the Governor approved SB 99-221. That bill allows Colorado district courts a special, restricted authority to amend declarations by court order, if particular procedures are followed.

What is SB 99-221?

Answer: SB 99-221 is a senate bill from 1999 that amends CCIOA and applies to all common interest communities, as defined in CCIOA. This is the bill that allows a Colorado district court to approve declaration amendments in certain circumstances.

What are the key parts of the court's authority to amend a declaration?

Answer: Colorado state statutes allow an Association to apply to the court to amend the declaration, by court order, after the association has taken the following steps:

1. A proposed amendment to the declaration must be prepared;
2. All owners must receive at least 2 notices of the proposed amendment from the association, by any means consistent with the Colorado Revised Nonprofit Corporation Act;
3. The association must hold at least one member meeting (called and held in accordance with the association's governing documents) to discuss the proposed amendment; and
4. At least half of the owners required under the existing declaration must vote for the proposed amendment (i.e., if approval of 90% of the owners is currently

required, then the procedure of petitioning a court for approval of the proposed amendment can be begun, only after 45% of the owners have voted for the proposed amendment).

Under the court authorized amendment process, are all or half of the mortgagee approvals required under the declaration before the petition can be filed?

Answer: Colorado state statutes do not require lender approval to begin the petition process to the court, even if lender approval is required by the existing declaration.

When can an association file a petition with the court seeking approval of a proposed declaration amendment?

Answer: When the four criteria listed above are met, the association, acting through its board of directors, may file a petition with the court requesting that the court approve the proposed amendment.

What must a petition to the court include?

Answer: The petition to the court must include a summary of:

1. Procedures and requirements for amending the declaration, as set forth in the declaration. [These procedures need not be followed when pursuing a court petition, unless the association is simultaneously seeking amendment by the terms of the declaration in the event that the court order is denied.];
2. The proposed amendment;
3. The owner association's reason for seeking the amendment and its anticipated effect;
4. The results of any votes on the amendment; and
5. Any additional information the association desires to submit.

The petition should also include, as exhibits, copies of:

1. The declaration and all amendments;
2. The actual language of the amendment;
3. All notices given to owners;

4. Any other documents the association wishes to submit.

What happens after a petition seeking court approval of a proposed declaration amendment is filed?

Answer: After the petition is filed, the court sets a hearing date on the petition (no earlier than 45 days, nor later than 60 days after the date the petition was filed).

Within 10 days after the hearing is set, the association must send written notice of the petition and hearing to all owners (by means consistent with the Colorado Revised Nonprofit Corporation Act), mail or hand deliver notice to the developer/builder (declarant) and send notice (by first class mail or hand delivery) to any lender who is entitled to notice of a declaration amendment under the declaration of any underwriting guidelines or requirements of the lender or FNMA, FHA or GMAC. The association must also file with the court, a list containing the names of the persons to whom the notice of petition and hearing was sent.

What should the association do before all owners are sent the notice required by state statute (the notice that a petition has been filed and that owners have objection rights)?

Answer: The association should prepare its owners for the notice, explaining the petition process, the objective of the association in seeking the proposed amendment and reviewing the objection rights of owners.

If the requirements of the state statute are met, must a court approve the petition (and the proposed amendment)?

Answer. Yes. The court must grant the petition and approve the proposed amendment if the association has complied with the requirements stated above (however, amendments terminating the declaration or changing the allocated interests of the owners are not to be granted) and the petition must not have been objected to in writing by:

1. More than 33% of the owners;
2. More than 33% of the eligible lenders;
3. The declarant (if such amendment eliminates any declarant rights or privileges or if the declarant is entitled to vote on the proposed amendment); or
4. FHA or VA (if the community has been approved by FHA or VA to allow owners to be able to obtain FHA insured loans or VA guaranteed loans).

What should the association do after a court has approved a proposed amendment, pursuant to the petition process reviewed above?

Answer: After waiting 15 days, the association should have the order certified, and a copy of the order attached to the proposed amendment. The proposed amendment should be executed by the appropriate association officers, their signatures notarized, and then the amendment, with the attached court order, should be recorded.

FAQs on Court Authorized and Other Means to Amend Declarations

How can a proposed declaration amendment be approved by first mortgagees, without obtaining the consent or vote of those mortgagees?

Answer: In 2005, the Colorado General Assembly and the Governor approved Senate Bill 05-100. That bill included several reforms of Colorado law, to make owner associations more accountable to their owners, and included provisions allowing for a publication and certified mail process to first mortgagees. If properly followed, the absence of a response from a first mortgagee can be treated as approval, allowing the owner association to obtain the required first mortgagee approval by the absence of responses from these lenders.

The declaration itself may also provide a procedure for assuming first mortgagee approval.

How does the above process work?

Answer: If the declaration requires first mortgagees to approve or consent to amendments, but does not set a procedure for registration or notification of first mortgagees, the association may obtain approval, based on the lack of response, if :

1. The association sends a dated, written notice and a copy of any proposed amendment by certified mail to each first mortgagee.
2. The association causes a dated notice to be published at least twice in a local newspaper.

How long must the association wait before it can treat a first mortgagee's failure to respond as a consent under this statute?

Answer: 60 days.