



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

SENATE BILL 23-178
CONCERNING REMOVING BARRIERS TO WATER-WISE LANDSCAPING IN COMMON INTEREST
COMMUNITIES

[Click the hyperlink above for the actual signed act text]

Sponsors: BY SENATOR(S) Jaquez Lewis and Will, Marchman, Priola, Bridges, Buckner, Coleman, Cutter, Exum, Fields, Ginal, Gonzales, Hansen, Hinrichsen, Kolker, Moreno, Roberts, Sullivan, Fenberg; also REPRESENTATIVE(S) McCormick and Lindsay, Amabile, Bird, Boesenecker, Brown, Dickson, Froelich, Hamrick, Herod, Jodeh, Kipp, Martinez, McLachlan, Michaelson Jenet, Ortiz, Parenti, Ricks, Sirota, Snyder, Titone, Valdez, Velasco, Weissman, Willford, Woodrow, McCluskie.

Signed by the Governor: May 17, 2023

Summary: This Senate Bill was introduced on March 3, 2023 and was signed by the Governor on May 17, 2023.

This bill allows unit owners residing in a Common Interest Community (homeowners association, property owners association, recreational association, cooperative, etc.) greater flexibility in deciding whether to install xeriscaping, non-vegetative turfgrass, or drought-tolerant vegetative landscapes on property the unit owner **is responsible for maintaining**. Previously, such property could have included a limited common element. Now, such property could also include any *right-of-way* or *tree lawn* under the purview of the unit owner.

An essential element of this bill is that this new law applies only to a unit that is a single-family detached home and does not apply to a unit that is a single-family attached home that shares one or more walls with another unit or a condominium.

As previously enacted, an association may adopt and enforce design or aesthetic guidelines or rules that apply to landscape installations that regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on property. However, of particular import, now an association must:

- A. Not prohibit the use of non-vegetative turfgrass in the backyard of a residential property;
- B. Not unreasonably require the use of hardscape on more than twenty percent of the landscaping area of a unit owner's property;
- C. Allow a unit owner an option that consists of at least eighty percent drought-tolerant plantings; and





COLORADO

Department of
Regulatory Agencies

Division of Real Estate

- D. Not prohibit vegetable gardens in the front, back, or side yard of a unit owner's property. "Vegetable garden" means a plot of ground or an elevated soil bed in which pollinator plants, flowers, or vegetables or herbs, fruits, leafy greens, or other edible plants are cultivated.

In addition, each association shall select at least three preplanned water-wise garden designs that are preapproved for installation in front yards within the common interest community. Such designs may be downloaded from the Colorado State University extension plant select organization (or from a municipality, utility, or other entity that creates such garden designs). In order to better assist HOA interested parties, a link to the Colorado State University Extension Plant Select organization can be found at: <https://plantselect.org/>.

For illustrative purposes only, three such preplanned water-wise garden designs an association might select from the above website could include:

1. High Elevation Planting Design Front Yard (Up to 8125') by Annie Barrow
2. Waterwise Cottage - Lauren Springer Ogden Collection
3. Dry Shade Garden design from Garden Thyme, Inc.

If an association has a public website, it shall post information concerning the preapproved garden designs. If an association does not have a website, it is encouraged to notify all unit owners in writing of the new preapproved garden designs or add the preapproved garden designs to its association governing documents (as well as notify unit owners of any subsequent amendments or changes in the future). A unit owner does not need to obtain association approval prior to selecting one of the preapproved garden designs, and a unit owner's decision in selecting one of the preapproved garden designs shall be considered by the association to be in compliance with the association's aesthetic guidelines. An association shall also allow a unit owner to use reasonable substitute plants when a plant in a preapproved garden design is not available.

If an association knowingly violates this act, a unit owner who is affected by the violation may bring a civil action to restrain further violation and to recover up to a maximum of five hundred dollars (\$500.00) or the unit owner's actual damages, whichever is greater. Unit owners should note that before a unit owner commences a civil action, the unit owner must notify the association in writing of the violation and allow the association forty-five days after receipt of the notice to cure the violation. Unit owners should consider how they will prove that they provided notice to the association. Examples of "proof" might include service of process or certified mail with return receipt requested, but the bill does not identify what constitutes "proof".





COLORADO

Department of
Regulatory Agencies

Division of Real Estate

An association may still:

- A. Adopt bona fide safety requirements consistent with applicable landscape codes or recognized safety standards for the protection of persons and property.
- B. Prohibit or restrict changes that interfere with the establishment and maintenance of fire buffers or defensible spaces; or
- C. Prohibit or restrict changes to existing grading, drainage, or other structural landscape elements necessary for the protection of persons and property.

The bill also amends section 37-60-126, C.R.S., stating that any section of a restrictive covenant or of the declaration, bylaws, or rules and regulations of a Common Interest Community that prohibits or limits xeriscape, prohibits or limits the installation or use of drought-tolerant vegetative or nonvegetative landscapes, requires cultivated vegetation to consist wholly or partially of turf grass, or prohibits the use of nonvegetative turf grass in the backyard of a residential property *is hereby declared contrary to public policy and, on that basis, is unenforceable*.

Effective Date: 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

More specifically, unless a referendum is initiated, August 7, 2023.

Related Tags: Brokers
 HOA Center
 Consumers

***This summary is not intended to constitute legal advice
and is provided by the Division of Real Estate
for informational purposes only.***

