



Hindman Sanchez

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PROPOSED DOCUMENT AMENDMENT REVIEW AND REPORT

CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION, INC.

STEP 1: DOCUMENTS REVIEWED

In preparation of this report, and the potential amendments to your documents as may be sought, we have reviewed the following documents:

1. Declaration of Crested Butte South Covenants and Restrictions recorded on August 26, 1970 in Book 420 at Page 404. Note, however, that the Declaration we reviewed is not a signed and recorded, copy, but was provided to us with the recording information noted. We have not verified the recording information for the Declaration.
2. Amendment to Covenants and Restrictions, Crested Butte South, unsigned and unrecorded copy.
3. Articles of Incorporation of the Crested Butte South Property Owners Association, filed with the Colorado Secretary of State on June 11, 1979.
4. Statement of Intent to Dissolve, filed with the Colorado Secretary of State on November 30, 1984.
5. Statement of Revocation of Voluntary Dissolution Proceedings of Crested Butte South Property Owners Association, filed with the Colorado Secretary of State on December 14, 1984.
6. Articles of Amendment of Articles of Incorporation of Crested Butte South Property Owners Association, Inc., filed with the Colorado Secretary of State on December 19, 1984.
7. Bylaws of the Crested Butte South Property Owners Association, Inc. signed, but not dated, as amended.

This Report does not include any title research or verification of maps, plats, annexations, amendments, supplements or legal descriptions. Should you wish for this work to be completed, such fees will be billed at our hourly rates and any costs from title companies or other agencies will be billed as an expense.

STEP 2: OVERVIEW OF GOVERNING DOCUMENTS

Declaration: The declaration (a/k/a CC&R's or Covenants) establishes, defines, and limits the property rights of owners and is recorded in the office of the clerk and recorder of the county in which the community is located. The recording ensures the terms of the declaration bind all present and future owners. Ideally, a declaration should contain the following:

- Specification of ownership of community components between the individual owners and association;
- A funding mechanism (such as assessments) for the purposes of maintaining and governing the community;
- Protective standards, restrictions, and obligations in areas ranging from architectural control to prohibitions on various activities;
- A plan for transition of control of the association from the developer to the owners.
- Definition of rights and a clear separation of responsibilities of owners and the association with respect to assessments, maintenance, insurance, common elements/common area, and modifications within the community.

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Articles of Incorporation: The articles of incorporation establish an association's corporate structure, and are filed with the Colorado Secretary of State's office. The articles of incorporation:

- Bring the corporation into existence;
- Define its basic purposes and powers;
- Indicate there must be a board of directors and identify the initial board; and
- Limit the personal liability and directors and officers.

Bylaws: The bylaws establish governing regulations for the administration and management of a community association and provide an "operating manual" for corporate action. Bylaws are not generally recorded with the Clerk and Recorder or filed with the Secretary of State and set forth in detail processes for the association's operations, such as:

- Requirements for membership in the community association;
- Requirements for membership of the board and board meetings;
- Voting rights of members;
- Procedures for electing the board of directors;
- Procedures for the board of directors to elect officers; and
- General powers and duties of the board.

STEP 3: FIND OUT WHAT IS REQUIRED TO AMEND

We are informed that the number of Lots/Units in the Community is currently 487. Quorum is currently 10% of the lots or clusters in the Association (49 Owners, 487 is the correct number of units, taking into account any cluster developments).

What are the consent or voting percentages required for amendment?

Articles: The Articles are silent as to amendment requirements. Therefore, per Colorado law, the Articles of Incorporation may be amended by a majority of the members present at a meeting of the members, assuming a quorum is present. The Board may, per Colorado law, amend specific provisions of the Articles without an owner vote.

Bylaws: Majority vote of the members present and constituting a quorum at a regular or special meeting of the Association

Declaration: Affirmative vote of the owners that vote on the amendment, provided that at least 40% of the owners vote, per the amendment to the Declaration.

Note: Per the Colorado Common Interest Ownership Act, a declaration can only be amended by the affirmative vote or agreement of the owners to which more than 50% of the votes in the association are allocated or such larger percentage, not to exceed 67%, that the declaration specifies. A declaration may specify a smaller percentage than a simple majority only if all of the units are restricted exclusively to nonresidential use. Accordingly, despite the provision in the Declaration, in order to amend, at least a majority of all owners must vote or agree to any amendment.

STEP 4: DETERMINE IF AMENDMENT IS NEEDED AND MAKE A WISH LIST

Take a close look at how your Association operates. Do you have the tools you need to enforce covenants? To recover attorney fees? To accumulate funds for replacement and/or improvements? Do your covenants contain use restrictions that are no longer desirable? Are there use restrictions which you would like to add?

The following bullet points outline the details of your governing documents which we believe you should consider addressing through any proposed amendments. This list can be used as a starting point for you to begin to create your own wish list. If you decide to proceed with proposed amendments, there are a number of options which are mentioned. You should let us know what you like or dislike and what you would wish for if your covenants could say anything you wanted. Keep in mind the approvals required to accomplish amendments (see Step 2 above).

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Articles of Incorporation

- Your Articles do not contain a limitation of personal liability allowed by state statute. The Articles should be amended for this reason alone.
- Your registered agent and principal place of business should be changed to either your management company or our law firm.
- We recommend that you specify a range of the permissible number of directors in the Articles of Incorporation. A specific number within this range can then be established in the Bylaws.
- References to the original members of the Board of Directors can and should be removed.
- Your Articles, as amended, prohibit owners to vote by proxy. We recommend this provision be deleted.
- Your Articles do not contain an amendment provision. Colorado law permits amendments to the Articles to be approved by a majority of the members present and voting, in person or by proxy, at a duly constituted meeting of the members.
- Your Articles do not contain a provision regarding dissolution as is presently required by the Colorado Revised Nonprofit Corporation Act.
- Your Articles do not contain a provision about membership, the transfer of memberships and other similar issues. We recommend adding such a provision.

Bylaws

- Your Bylaws do not contain an indemnification clause. We recommend amending your Bylaws for this reason alone.
- Your Bylaws state that membership in the Association is limited to owners and purchasers. This should be revised to state that only owners are members (apart from associate members).
- Your Bylaws require the issuance of membership certificate from the Association upon the payment of the annual maintenance charge by an owner. That membership certificate then entitles that owner to the rights and privileges of a member in good standing, such as voting and use of the facilities. Does the Association issue such certificates? This provision could be revised to state that all owners are members, but then giving the Association the authority to suspend the voting and use rights of owners for non-payment of assessments and/or other covenant or rule violations.
- Your initial Bylaws allowed for owners to vote by proxy. The copy we have has this provision crossed out, and per the ballot attached to the Bylaws, it appears this provision was removed from the Bylaws. We recommend revising the Bylaws to clearly allow owners to vote via proxy to allow greater flexibility in holding membership meetings.
- Your Bylaws allow for "associate memberships". Does the Association still issue such associate memberships? If not, this provision could be removed.
- Your Bylaws call for a board of five members. This provision can be revised, if you choose, to allow for a range for the number of directors.
- Pursuant to Colorado law, directors cannot remove other directors, even if the current Bylaws allow such removal. Furthermore, if members remove one or more directors, the members should elect directors to fill the vacancies caused by the removal. The removal provisions should be revised accordingly.
- Your initial Bylaws required annual meetings to be held on the second Saturday of August, which appears to have been amended to allow for greater flexibility. If not, we recommend that this provision be made more flexible.

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- Current statutes allow for a minimum of 10 days notice of owner meetings. You currently have a 20 day notice requirement for annual meetings. This can be lowered if you choose. Additionally, you may wish to set a maximum notice period. You currently do not have a maximum time frame in your Bylaws. Colorado law provides a maximum notice time frame of 50 days.
- Your owner meeting notice provisions should be revised to additionally require physical posting of notice in a conspicuous place within the community. This is now required by Colorado law.
- Your quorum requirement of 10% can be kept, lowered or increased if you choose; however, please note that the members must vote on any amendment to the quorum requirement, pursuant to Colorado law.
- Your Bylaws should contain a waiver of notice provision for member meetings.
- Your Bylaws require a specific order of business to be followed at all meetings and require the use of Robert's Rules of Order. We recommend that this provision be made more flexible.
- Your Bylaws contain an unusual notice provision for Board meetings. We recommend revising the Board meeting notice requirements to be consistent with the more flexible provisions in the Colorado Revised Nonprofit Corporation Act.
- Your Bylaws are silent on the Board's authority to take action without a meeting. The Colorado Revised Nonprofit Corporation Act allows for action without a meeting with less than unanimous consent unless otherwise provided for in the Bylaws. Your Bylaws should be revised to clearly take advantage of the statutory provision.
- You may wish to expand director qualifications to require directors to be current in payment of assessments and in compliance with the Association's governing documents.
- Your election vote provision should be revised to require contested Director elections to be conducted via secret ballot. This is now required by Colorado law.
- The Bylaws allow the Treasurer alone to sign checks. We recommend requiring two signatures on all Association checks.
- The Association has the right to suspend an owner's membership privileges for violations of the governing documents, as well as the right to impose fines of up to \$50. Colorado law requires that prior to imposing a fine for covenant violations the Association must first provide notice and an opportunity for a hearing. Regardless, we recommend removing the cap on the amount of fines that can be imposed.
- Unless otherwise provided in the Bylaws, the Colorado Revised Nonprofit Corporation Act permits members to vote by regular mail. You should consider adding this provision to your Bylaws to set forth the statutory procedural requirements for voting by mail.
- Unless otherwise provided in the Bylaws, the Colorado Revised Nonprofit Corporation Act permits members to conduct business electronically (i.e. conduct meetings via the internet, vote by electronic mail and allow digital signatures to documents). You should consider adding this provision to your Bylaws. However, please be advised that electronic notice cannot replace personal or mail delivery of notice to owners.
- The Colorado Revised Nonprofit Corporation Act also allows directed proxies from one director to another director if allowed for in the Bylaws. You should consider adding this.
- The Bylaw provision regarding assessments is more appropriately placed in the Declaration.

Declaration

- Your current Declaration contains numerous references to the developer and special developer rights. These references can and should be eliminated.
- Your Declaration defines and allows "Cluster Developments". Do you have Cluster Developments? Do you want to retain the ability for owners to create Cluster Developments?
- You should add a provision expressly authorizing the imposition of fines, after notice and the opportunity for a hearing, for rule or covenant violations.
- Your assessment provisions can be simplified and updated. You may wish to consider using a budget approval process instead of the existing cap on increases in assessments. We do not recommend caps on assessment increases.
- Your collection rights can be expanded to expressly permit you to bid on a foreclosed lot at the foreclosure sale. You should also have the right to accelerate and decelerate assessments which remain delinquent for a specified period.
- Your Declaration limits interest on late payments to 8%. We recommend that this limit be removed from the Declaration and instead be set forth in the Rules and Regulations or in a collection policy.
- Your Declaration does not address the "superlien" priority allowed under CCIOA, which allows the Association to place a priority lien before all other liens for up to six months of assessments. We recommend this authority be added to your Declaration.
- You should consider adding a provision to your Declaration which allows the Association to assess less than all lots based on benefit (i.e. maintenance which is specific to particular lots instead of all lots).
- Your Declaration establishes the Crested Butte South Improvement Committee/Board, which acts as the Board and as the architectural review committee. This could be revised to establish an architectural review committee which is separate from the Board.
- Your Declaration requires all structures be designed by a registered architect or professional engineer, or an equally qualified person or firm. Is this provision still applicable or practical to your community?
- A variance provision can be added to build in some flexibility with regard to architectural approval.
- You should consider adding a provision which specifies that an architectural review committee decision in one instance does not create a precedent in other instances.
- You should add an indemnification provision in favor of the architectural review committee and specify that the architectural review committee is not reviewing plans and specifications for compliance with building codes or for engineering soundness.
- Your Declaration contains a provision related to lots reserved for community purposes. Is this provision still relevant? If not, it should be removed.
- Your current Declaration contains no provisions regarding insurance. Specific and general insurance provisions should be added to specify insurance obligations of the Owners and the Association.
- Your use restrictions are limited. You may desire to add use restrictions which address issues specific to your community. Additionally, you should consider revising your use restrictions to:
 - * add landscaping restrictions in compliance with Colorado law
 - * allow home occupations and permit some flexibility through rules and regulations
 - * impose leasing restrictions
 - * bring your sign provision into compliance with CCIOA requirements
 - * bring your parking restrictions into compliance with Colorado law
 - * bring your satellite dish/antenna provision into compliance with FCC regulations

- * add a clothesline and solar panel provision in compliance with CCIOA requirements
 - * expressly provide for notice and the opportunity for hearing for violations of the rules before fines are imposed
 - * add additional restrictions, as appropriate, for the community.
- There is no provision clearly defining the common areas and expressly requiring the Association to maintain the common areas. You should consider adding this.

STEP 5: SOLICIT COMMUNITY SUPPORT

As the Board determines to seek amendments and then approves the proposed form of the amendments, the Board should solicit and obtain community support. By receiving feedback from Owners early in the process, the Board will know if Members are satisfied with the amendment. Obtaining support also allows the Board to educate Members on the need for the amendment. That way, when the Board distributes consent forms, progress will not be delayed while Members are brought up to speed. Education can be done through informational meetings and printed materials, such as newsletters, flyers, and letters. The size of the Association, the number of on-site Members, and the proposed amendment itself - its length and complexity - will determine the Board's strategy.

It is not enough to explain to Members why the amendment is needed. Also explain why the support of each Member is needed, particularly if the percentage required to approve the amendment is burdensome. Finally, don't forget to listen to your Members' comments. They may be able to point out issues the Board had not considered.

STEP 6: DEVELOP A STRATEGY

Without a clear strategy, amendments will probably not be approved. The Board's strategy will depend in large measure on the voting procedure required by the Association's documents. Generally there are two procedures: taking a vote at a meeting of the Members, or adopting the amendment by written consent.

If a meeting is required, you must consider legal issues such as notice and quorum requirements, and practical concerns, like the date, time, and location of the meeting. Attendance and participation must be as convenient as possible. The use of proxies will be critical for success. Lessons learned over the years from obtaining quorums for annual meetings will apply here.

STEP 7: MONITOR PROGRESS AND ADAPT TO CHANGES

For associations that only need written consent to amend the documents - not a formal meeting - developing a strategy is not enough. To be successful, the Board must also monitor its progress. What may have sounded reasonable and workable in the planning stage may be failing miserably.

The Board needs to keep current records as to which Members (and mortgagees) have consented to the amendment and when. It also needs to review all returned consents to make sure the signatures are properly notarized (if required) and match the Membership roster. The Board should set realistic goals and benchmarks to measure progress - for example, obtaining 50 percent of the consents one month after mailing them. It should follow up with all persons involved in obtaining consents and keep the community informed on the status of the process.

Finishing the project in 6 months is a good target. If a strategy is not working, adjust accordingly - lost momentum is nearly impossible to get back. The longer the project takes, the less likely it is to succeed. Don't hesitate to adopt a new plan if your current one is not working.

STEP 8: COURT SANCTIONED AMENDMENT OF THE DECLARATION

You may desire to seek court assistance to obtain approval for amendments to the Declaration. A portion of CCIOA, within C.R.S. §38-33.3-217, permits court sanctioned amendments to declarations. The following steps must be accomplished to take advantage of this statute allowing court sanctioned declaration amendments:

- I. All owners must receive at least two notices (by any means consistent with the Colorado Revised Nonprofit Corporation Act) of the proposed amendment;

2. 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;
3. At least half of the owners required under the existing Declaration must vote for the proposed amendment;
4. A Petition must be prepared and filed with the court requesting that the court approve the amendment. The Petition is required to include:
 - a. A summary of the procedures and requirements for amending the Declaration that are set forth in the Declaration,
 - b. The proposed amendment to the Declaration, the effect of and reason for the proposed amendment, including a statement of the circumstances that make the amendment necessary or advisable;
 - c. The results of any vote taken with respect to the proposed amendment;
 - d. Any other matters that the association believes will be useful to the court in deciding whether to grant the Petition; and
 - e. As exhibits, copies of:
 - i. The Declaration, as originally recorded, and any recorded amendments to the Declaration;
 - ii. The text of the proposed amendment;
 - iii. Copies of any notices sent pursuant to the requirements of the statute;
 - iv. Minutes from the owner meeting(s) held to discuss the proposed amendments ; and
 - v. Any other documents that the association believes will be useful to the court in deciding whether to grant the Petition;
5. A hearing is scheduled on the Petition within 45 to 60 days after filing the Petition;
6. A notice of the Petition and notice of the hearing must be sent to owners, first mortgagees, and the declarant within ten (10) days after the hearing date is set; and
7. The court is required to grant the Petition unless 33% of the owners, 33% of the lenders, the declarant, FHA or VA objects to the amendment.

Obviously it is far better to obtain community support for Declaration amendments you may propose rather than looking to a court for assistance. A court sanctioned amendment should be viewed as a last resort rather than a mechanism for adopting controversial provisions which your community does not really want.

STEP 9: CERTIFIED MAIL OPTION FOR MORTGAGEE APPROVAL

If approval of first mortgagees is required by the declaration, SB 100 provides that such requirement will be satisfied if the association takes all of the following steps:

- sends dated written notice of proposed amendment to each mortgagee at its most recent address in the county real estate records;
- attaches a copy of the proposed amendment to the notice;
- sends notice by certified mail;
- the notice must also be printed in a newspaper (in the community's county) two times at least one week apart; and
- the newspaper notice must provide information on how to obtain a copy of the proposed amendment.

Any first mortgagee who does not give the association a negative response within 60 days after the notice date, will be deemed to have approved the proposed amendment.

STEP 10: CERTIFY AND RECORD THE AMENDMENT

Your months of planning, drafting, community meetings, and door-to-door canvassing have at last paid off. The requisite number of Members (and mortgagees) have consented to the amendment. It's time to take that well-deserved vacation. Almost.

Depending on the requirements in your governing documents and state statute, the Board may need to adopt the amendment in the form of a resolution. The president and secretary may need to sign it and certify the validity of its consents. The amendment should be recorded or filed where the Declaration was originally recorded, and the Association's counsel should seek to ensure that the Board has complied with all legal requirements.

Copies of the amendment should be mailed to all Association Members. Failure to follow the requirements set out in the governing documents or statutes may serve as grounds for challenging the validity or enforceability of the amendment at a later date.

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TIMING PROJECTION FOR PROPOSED AMENDMENTS

The following checklist may assist you in setting target dates to accomplish certain tasks:

Month One

- Meetings of the Board of the Association to adopt a resolution to proceed with the amendments and to discuss changes to governing documents.

Months Two-Three

- Draft the initial set of documents.
- Explain the amendments which the Association is undertaking in newsletters/Member meetings.
- Meeting of the Board and/or Committee and an attorney from HindmanSanchez P.C. to review, revise and comment on the proposed documents.
- Revisions to documents may be made within three weeks of receipt of comments. Documents finalized (assuming there is only one set of major revisions).

Months Four-Nine

- Special meeting of the Members to explain amendment process and anticipated changes.
- Make draft documents available to Members for review and comment.
- Finalize documents and distribute to Members.
- Begin to obtain consent of the Members for the amended documents.
- Meeting of the Board of Directors to establish a plan for solicitation of remaining consents, including door to door solicitation of Members and potential scheduling of special meeting of the Members.

Month Ten

- Instigate solicitation plan for obtaining the remaining owner consents.
- (a) File petition seeking court approval of the proposed Amended and Restated Declaration (if using the court petition process).
or
(b) Send notice of the proposed amendments to the first mortgagees in accordance with The Certified Mail Option for Mortgagee Approval.
- Begin publication of notice to first mortgagees (if using The Certified Mail Option for Mortgagee Approval).

Month Eleven

- Notices of the petition mailed to all owners, lenders and others (if using the court petition process).
- Meetings of the Members/or Board, are needed (if using the court petition process).

Months Twelve-Thirteen

- (a) Hearing on the petition/ ruling of the court (if using the court petition process).
- or
- (b) Check if any negative comments received from first mortgagees (if using The Certified Mail Option for Mortgagee Approval).

Month Fourteen

- Record Amended and Restated Declaration.
- File Amended and Restated Articles of Incorporation with the Secretary of State.
- Finalize and execute Amended and Restated Bylaws.

Month Fifteen

- Distribute all Amended and Restated documents to all owners.