From Reservation to Termination

Development Rights Under the Colorado Common Interest Ownership Act

BY MIRO KOVACEVIC

This article describes the process to properly reserve, exercise, transfer, amend, terminate, and reinstate development rights in a common interest community subject to the Colorado Common Interest Ownership Act.

Statutory provisions concerning development rights appear relatively straightforward. Nonetheless, there has been a proliferation of litigation over development rights in the context of these statutory provisions over approximately the past 20 years. As such, practitioners must take care to understand the applicable statutory provisions and relevant case law to fully understand the various pitfalls that can impede and potentially derail a developer's attempt to exercise development rights.

With some limited exceptions, the Colorado Common Interest Ownership Act (CCIOA), CRS §§ 38-33.3-101 et seq., automatically applies in its entirety to all planned, condominium, or cooperative communities created in Colorado on or after July 1, 1992 (a CCIOA community).[1] CCIOA generally does not apply to communities created before that date.[2]

Presumably, the vast majority of development rights reserved before July 1, 1992, have lapsed, been exercised, or otherwise been terminated. Thus, when a developer reserves or exercises a development right today, it is likely doing so subject to CCIOA requirements.[3] Indeed, the statutory[4] and case law guidance (outside of the planned unit development) on development rights pre-CCIOA is scant at best.[5] As such, this article focuses on the exercise of development rights within CCIOA communities today.

What Are Development Rights?

It is the State of Colorado's policy "to give developers flexible development rights with specific obligations within a uniform structure of development."[6] To that end, the General Assembly enacted CCIOA in 1991 to provide a "clear, comprehensive, and uniform framework for the creation and operation of common interest communities."[7]

Every "duty governed by [CCIOA] imposes an obligation of good faith in its performance or enforcement."[8] Further, the terms of CCIOA "may not be varied by agreement, and rights conferred by [CCIOA] may not be waived."[9]

Development rights concern a declarant's[10] right to develop a portion or the entirety of a "common interest community."[11] Such a community is defined as certain real estate described in a "declaration"[12] that compels an owner of a "unit"[13] therein to "pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration."[14] A community is created by recording of a declaration in the real property records; the declaration must describe the real property to be included in the community and contain a description of any development rights reserved.[15]

As defined in CCIOA:

> Development rights 'means' any right or combination of rights reserved by a declarant in the declaration to:
>
> (a) Add real estate to a common interest community;[16]
>
> (b) Create units, common elements, or limited common elements within a common interest community;
>
> (c) Subdivide units or convert units into common elements; or
>
> (d) Withdraw real estate from a common interest community.[17]

This is an exhaustive list of reservable development rights.[18] Thus, for example, while the conversion of units to common elements is recognized as an explicit development right, the conversion of common elements to units is not.[19]

Development Rights Versus Special Declarant Rights

Development rights and special declarant rights are commonly associated with each other, though they are not identical. Development rights are limited to the above four categories of rights.[20] Special declarant rights, on the other hand, include the rights reserved to a declarant to perform certain acts including, but not limited to, exercising development rights; completing improvements on a map or plat filed with a declaration; maintaining sales offices, management offices, and advertising signs with the community; and using easements through the common elements to make improvements within the community.[21] As such, development rights are a specific subset of special declarant rights.

Development Rights Are Important

Development rights impact all parties relevant to a common interest community. These rights give a developer the ability to gain access and build out a project over time to minimize costs and maximize profits in accordance with market fluctuations. They also directly impact owners within, and the association overseeing, a common interest community. Properly exercised development rights can change the size, density, layout, or design of a community or the amenities of a community. Such development could improve a community's overall value and reduce owners' exposure to common expenses—or it could have the opposite effect. These rights may also increase the responsibilities of the association charged with maintaining and operating the project, requiring additional resources and budget allocations to manage those obligations.

The typical exercise of development rights includes situations where the developer builds a community in phases. This approach benefits the developer because it may avoid assessment payments on the unannexed units. The owners further benefit with the approaching completion of the community. On the other hand, the community is subject to continual construction and related issues. And while these issues should be anticipated, tensions may rise when the developer's plan for the development changes. For example, a developer may pivot from adding townhome-style units to a denser multifamily condominium. The added density, while potentially lucrative for the developer, can place additional stress on the community's infrastructure beyond what was contemplated at the beginning of the project.

Statutory Requirements and Case Law Regarding Reservation of Development Rights

In order to properly reserve a development right and create a phased community,[22] the declaration must explicitly reserve (1) any desired development right (i.e., the right to add real estate, create units/common elements, subdivide units/converting units into common elements, or withdraw real estate); (2) the associated special declarant rights (e.g., the right to exercise the reserved development right); (3) a description of the real estate to which those rights apply; and (4) the time limit within which the development right must be exercised.[23]

Identifying which real estate within a community is subject to development rights is critical. The map (unless the information is contained in a declaration or on a plat) must contain a "legally sufficient description, which may be of the whole common interest community or any portion thereof, of any real estate subject to development rights and a description of the rights applicable to such real estate . . . ."[24] The declaration must also detail the "location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw . . . ."[25] Importantly, the declarant may still reserve the right to add real estate and

> may amend the declaration at any time during as many years as are specified in the declaration [(i.e., the time limit set forth in the declaration to exercise a development right)] to add additional real estate to the common interest community without describing the location of that real estate in the original declaration.[26]

If the declarant reserves the right to add or withdraw units from the community, it must also provide in the declaration "formulas to be used to reallocate the allocated interests among all units" after the units' addition or withdrawal.[27] Further, to the extent the declarant reserves the right to convert a unit into common elements or to create additional units, the unit or units to which this right shall apply must be identified in the declaration, map, or plat.[28]

If there are any conditions or limitations under which the development rights may be exercised, these must be additionally stated in the declaration.[29] If the declarant desires to reserve the right to exercise development rights within different parcels at different times, it must include a statement to that effect in the declaration, along with other required statements relating to the timing of the exercise of such rights.[30]

While a declarant "must" reserve development rights within the declaration under CCIOA, it is possible for "[a]dditional development rights not previously reserved [to] be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required" to be within the declaration and in a plat or map with respect to a planned or condominium community, as the case may be.[31] The reservation of development rights for newly added real estate must be made when the real estate is added to the common interest community and does not extend the period for exercising those rights under the declaration.[32]

Colorado courts have interpreted CCIOA's reservation requirements as mandatory and aimed at providing full disclosure regarding applicable development rights.[33] Indeed, as the Colorado Court of Appeals held in *Silverview at Overlook, LLC v. Overlook at Mt. Crested Butte LLC*, CCIOA's requirements concerning the proper reservation of development rights are material and must be satisfied in order to properly exercise such rights.[34]

There, the defendant developer (Overlook) developed a condominium project subject to CCIOA.[35] Overlook purported to reserve development rights under the declaration, but it failed to include a time limit for exercising those rights.[36] Overlook subsequently sold the development rights to the plaintiff (Silverview).[37] Later, the defendant condominium association (Overlook Association) questioned the validity of the development rights, which resulted in Silverview initiating litigation against Overlook and the Overlook Association.[38] The district court ruled that the lack of time limitation rendered the development rights void ab initio, and Overlook appealed.[39]

The Colorado Court of Appeals affirmed.[40] The court held that CCIOA's provision stating that a reservation of development right "must" contain a time limit within which such right may be exercised was "mandatory and not subject to equivocation."[41] In rejecting Overlook's argument that failure to include a time limitation was insubstantial, the court found that the General Assembly's reference to the time limitation in other provisions of CCIOA emphasized its importance.[42] The court additionally noted the vital role the time limit played because it gives the unit owners notice of how long further development of the project can be expected, and further allows unit owners to reasonably expect to provide input "as to whether and upon what conditions development rights may be exercised after the specified time limit has expired."[43]

Colorado courts have repeatedly confirmed that strict adherence to the reservation requirements is necessary to properly reserve these rights.[44] As such, if development rights are not properly reserved, they cannot be exercised. This means that a developer may lose not only the ability to monetize portions of the real estate it intended to develop, but also the ability to annex subsequently created units based on development rights that were improperly reserved. This can preclude subsequently created and annexed units from being incorporated into the common interest community, leaving them in a title quandary.[45]

Exercising Development Rights

As noted above, there are four categories of development rights that can be reserved in a declaration: (1) adding real estate, (2) creating units/common elements, (3) subdividing units/converting units into common elements, or (4) withdrawing real estate.[46] In order to properly exercise the right to do any of the foregoing, the declarant must satisfy certain procedures outlined in CRS § 38-33.3-210(1). If the declarant seeks to exercise any of the development rights, except for adding real estate, it must satisfy additional requirements. Each is addressed in turn below.

Addition of Real Property

As set forth in CRS § 38-33.3-210(1), in order to exercise a properly reserved development right to add real estate to a common interest community (or exercise any of the other three development rights), the declarant "shall prepare, execute, and record an amendment to the declaration and, in a condominium or planned community, comply with the provisions of section 38-33.3-209."[47] Thus, the declarant is required to execute and record an amendment to the declaration reflecting the exercise of the development right and, to the extent necessary, ensure the appropriate amendment to the plat or map is also recorded.[48]

In addition, any such amendment adding real estate to the common interest community must be executed or expressly authorized by the owner of the real estate to be added.[49] The amendment must be recorded in every county in which any portion of the community is located, indexed in the grantee's index in the name of the community and the association and in the grantor's index by each person executing the same.[50] The amendment is effective only upon recording.[51]

Finally, the declarant is prohibited from adding more than 10% of the real property originally subject to the declaration.[52] The addition of real estate may also not result in an increase in the number of units beyond the required limit set forth in the declaration.[53]

The Colorado Court of Appeals' and the Colorado Supreme Court's decisions in *Ryan Ranch Community Ass'n, Inc. v. Kelley* thoroughly examined whether the development right to add real property to a community (i.e., annexation) was properly effectuated under CRS § 38-33.3-210.[54]

In a relatively complex fact pattern, owners of a property (Ryan Ranch) recorded an Official Development Plan (ODP), which contemplated that a homeowners association would be formed to maintain the community's common areas and facilities.[55] After Ryan Ranch was conveyed to the declarant (Ryland), it recorded a declaration that specifically identified certain lots to be annexable in the community (the Kelley Lots).[56] The Kelley Lots were subsequently conveyed to Ryland (the phase 2 Oschner-Ryland deed), which subsequently recorded a plat identifying the Kelley Lots (the Filing 2 Plat).[57] Ryland then conveyed the Kelley Lots to a third party.[58] A few years later, the association overseeing Ryan Ranch claimed that the Kelley Lots were subject to the declaration and, therefore, the owners of the same owed back assessments.[59] Litigation ensued, and the district court entered summary judgment in favor of the association, finding that various documents, including the ODP, the declaration, the phase 2 Oschner-Ryland deed, and the Filing 2 Plat, collectively qualified as an amendment required under CRS § 38-33.3-210.[60]

> "Thus, consistent with the court of appeals decision in *Silverview*, the Colorado Supreme Court's decision in *Ryan Ranch* confirms that precise satisfaction of CCIOA's requirements must be met in order to properly exercise a development right."

On appeal, the Colorado Court of Appeals reversed, holding that the Kelley Lots were not properly annexed into the community since no amendment to the declaration was recorded as required under CRS § 38-33.3-210.[61] In particular, the court rejected the argument that the ODP and the declaration constituted an amendment to the declaration since they were created and recorded before the purported annexation occurred, and the ODP was not recorded by declarant as required under CRS § 38-33.3-210(1).[62] The court further held that the phase 2 Oschner-Ryland deed and the Filing 2 Plat did not satisfy the requirement for an "amendment"' under CRS § 38-33.3-210 since they did not, among other things, purport to amend the declaration, assign an identifying number to each newly created unit, or reallocate the allocated interests among all units.[63]

The Colorado Supreme Court granted certiorari and affirmed.[64] It first held that the reservation to add certain real estate (i.e., the annexation) was a "development right" under CCIOA.[65] As such, the court found that in order to properly annex the Kelley Lots into the community, Ryland was required to

1. record an amendment to the declaration that (a) assigned identifying numbers to each of the Kelley Lots, (b) reallocated the allocated interests among all units within the community, and (c) described any common elements/limited common elements created by the amendment;
2. comply with CRS § 38-33.3-209 (plats and maps); and
3. comply with CRS § 38-33.3-217(3) (location and indexing of recorded amendment).[66]

The court found that the requirements under CRS § 38-33.3-210 were never met for two reasons.[67] First, looking at the documents upon which the district court relied, none of them reallocated the interests among the units.[68] Second, the court held that the phase 2 Oschner-Ryland deed and the Filing 2 Plat were not properly indexed under the names of the community or the association, as required under CRS § 38-33.3-217(3).[69] The court did not treat these failures as mere technical defects but as fundamental violations of CCIOA's mandatory procedures.[70] Thus, consistent with the court of appeals decision in *Silverview*, the Colorado Supreme Court's decision in *Ryan Ranch* confirms that precise satisfaction of CCIOA's requirements must be met to properly exercise a development right.

Creation of Units/Common Elements

With respect to exercising a development right to create a unit or units, the declarant must record an amendment pursuant to CRS § 38-33.3-210(1); the declarant is the owner of any newly created units thereby.[71] Further, the corresponding amendment "must assign an identifying number to each new unit created and . . . reallocate the allocated interests among all units."[72] Finally, the amendment "must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated . . . ."[73]

The Colorado Court of Appeals in *Kroesen v. Shenandoah Homeowners Association, Inc.*, specifically addressed the requirements for properly creating common elements when exercising development rights.[74] There, a developer divided a large parcel into two subdivisions (the Shenandoah and Highlands Subdivisions) by recording declarations and plats.[75] The plats depicted two roads, portions of which formed the boundary between the two subdivisions. The plats for the Shenandoah Subdivision further arguably created an easement that permitted the owners of lots in the Highlands Subdivision to access their properties over these roads.[76] A dispute arose concerning the rights of certain homeowners within the Highlands Subdivision to access their lot over the roads at issue.[77] The district court ruled in the homeowners' favor and held that the plats for Shenandoah Subdivision were sufficient to establish an easement over the two roads.[78]

The Colorado Court of Appeals affirmed.[79] It first upheld the district court's ruling that the easement created by the plats that amended the Shenandoah Subdivision were specific enough to create an easement providing access to the lot at issue under the common law.[80] The court next held that that the reservation of the right to create an easement was a development right and that the developer's creation of the easement, through plat amendments, satisfied the requirements under CRS § 38-33.3-210.[81] The court then rejected the appellant's argument that the developer's failure to describe the easement in each and every plat it recorded failed CCIOA's requirements, noting that CRS § 38-33.3-209 does not require duplicative language in every plat amending a declaration.[82] It further rejected any argument that the requirement for the "legally sufficient" description of real estate under CRS § 38-33.3-209(2)(e) imposed any greater obligations to describe an easement than the common law.[83]

The more flexible approach in *Kroesen* is arguably at odds with the precision required in the *Ryan Ranch* decision. Nonetheless, it is recommended that practitioners incorporate by reference previous applicable recorded documents when recording documents to complete the exercise of development rights.

Conversion/Subdivision of Units

If the declarant exercises the development right to convert a unit into common elements, the declarant is required to record an amendment to the declaration under CRS § 38-33.3-210(1). This amendment must "reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain."[84] On the other hand, if the declarant seeks to subdivide a unit into two or more units, regardless of whether any portion of the unit is converted to common elements, the declarant must record an appropriate amendment that also reallocates the "interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant."[85]

Withdrawal of Real Estate

To the extent the declaration reserves the right to withdraw real estate from a community, there are certain statutory limitations that apply after an appropriate amendment pursuant to CRS § 38-33.3-210(1) withdrawing real estate is recorded.[86] First, if all of the real estate subject to the declaration is subject to the right of withdrawal and the declaration does not describe separate "portions" of real estate subject to that right, "none of the real estate may be withdrawn after a unit has been conveyed to a purchaser."[87] Second, if any portion of the real estate subject to the declaration is subject to the right of withdrawal, "it may not be withdrawn after a unit in that portion has been conveyed to a purchaser."[88]

In *Vista Ridge Master Homeowners Ass'n v. Arcadia*, the Colorado Court of Appeals examined the proper protocol for withdrawing real estate under CRS § 38-33.3-210(4).[89] There, a declaration reserved the right to withdraw any portion of the community pursuant to CCIOA.[90] A plat was recorded platting 94 single family residential lots, which were subsequently annexed into the community.[91] At least eight of these lots were sold to third parties.[92] The successor declarant (Arcadia) then purported to record an amendment to the declaration seeking to withdraw 70 of the lots that it owned.[93] The association for the community challenged the withdrawal and initiated litigation.[94] The district court entered summary judgment against Arcadia declaring that the de-annexation of the 70 lots was invalid, and Arcadia appealed.[95]

The Colorado Court of Appeals affirmed and held that the provisions of CRS § 38-33.3-210(4) invalidated Arcadia's attempt to withdraw real estate from the community.[96] The court focused on the plain language of CRS § 38-33.3-210(4), which provides:

> If the declaration provides, pursuant to section 38-33.3-205, that all or a portion of the real estate is subject to a right of withdrawal:
>
> (a) If all the real estate is subject to withdrawal, *and the declaration does not describe separate portions of real estate subject to that right*, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and
>
> (b) If *any* portion of the real estate is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.[97]

The court noted that CRS § 38-33.3-210(4)(a) only applies if the declaration fails to describe separate portions of real estate subject to withdrawal, while CRS § 38-33.3-210(4)(b) applies "if the declaration *does* describe separate portions that are subject to withdrawal."[98] The court found that the term "portion" "must therefore refer to a *described* portion as used in subsection 210(4)(a)."[99]

As such, the court held that the plat that depicted the 94 lots described a separate portion of the community—the 94 lots.[100] The court further stated: "It is irrelevant that there may be smaller "portions" within [the plat (i.e., the lots)] because subsection 210(4)(b) applies to *any* portion, not just the smallest possible portion."[101]

Therefore, once one of the 94 lots was sold, the right to withdraw was extinguished, thus voiding Arcadia's attempt to withdraw the 70 lots.[102] The court reasoned that its holding not only comported with the plain language of CRS § 38-33.3-210, but also would help owners better predict which neighboring lots would remain a part of the community.[103] It further asserted that its interpretation would preclude developers from arbitrarily designating a part of the community as a "portion" of a larger "portion."[104]

The takeaway from this decision is that if real property is subject to a declaration with a preserved right to withdraw any portion thereof, practitioners must take care to ensure that the description of the real property subject to the withdrawal right is clear and consistent with the declarant's intent for the development of the property.

Conveyance of Development Rights

Properly reserved special declarant rights, including development rights, may be "transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the common interest community is located."[105] Such a conveyance, however, is only effective if executed by the transferee.[106] CCIOA defines the liabilities of the transferor and transferee of such conveyed rights,[107] which are controlling.[108]

Amendment of Development Rights

CCIOA authorizes the declarant to amend the declaration in the exercise of development rights and a few other circumstances.[109] The declarant may further reserve novel development rights with respect to newly added real property to the community.[110] CCIOA does not, however, authorize a declarant to amend the declaration to amend development rights.

As a result, because development rights are reserved within a declaration, CCIOA's general amendment provision found within CRS § 38-33.3-217(1)[111] is the primary provision controlling amendment to development rights. This provision mandates that the affirmative vote or agreement of at least 50% and not to exceed 67% of the votes in the association, pursuant to the terms of the declaration, are required to approve an amendment. Importantly, to the extent any proposed amendment would "create or increase special declarant rights, increase the number of units, or change the boundaries of any unit or the allocated interests of a unit," the proposed amendment would require that the

> vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by a declarant, are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.[112]

Other than the required approval under CRS § 38-33.3-217(1), nothing in CCIOA prohibits or otherwise limits an amendment to the declaration that would delete development rights. As such, the practitioner is well advised to abide by the Colorado Supreme Court's decision in *Vallagio at Inverness Residential Condominium Ass'n v. Metropolitan Homes, Inc.*, which approved language in the declaration ensuring that any amendment seeking to delete or reduce development rights/special declarant rights were subject to the declarant's consent.[113]

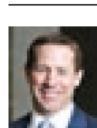
Termination and Reinstatement of Development Rights

Unexercised development rights terminate when of the time period set forth in the declaration expires.[114] Before that period expires, however, the declarant may record an instrument surrendering any unexercised development rights.[115]

Lapsed or surrendered development rights may be extended or reinstated only if the association agrees "to an extension of the time period for exercise of the development right or a reinstatement of the development right subject to whatever terms, conditions, and limitations the association may impose on the subsequent exercise of the development right."[116] Because CRS § 38-33.3-210(5) only references the association's "agreement" and the declarant's right to record an amendment extending these rights, the association's board would be authorized to agree to this without owner approval of an amendment pursuant to CRS § 38-33.3-217(1)(a)(I). Finally, any agreed-upon extension or reinstatement, and its terms and conditions, must be "included in an amendment executed by the declarant or the owner of the real estate subject to development right and the association."[117]

Conclusion

The precise reservation and exercise of development rights are essential to the successful development of a community. Proper use of development rights may benefit both the developer and the community. Failure to correctly reserve and exercise development rights can lead to significant title issues, litigation, and other turmoil within a community. Practitioners can help a community development succeed by advising declarants on the practicalities, steps, and legal framework for effectively exercising development rights, including compliance with CCIOA's requirements and consideration of corresponding case law. CL



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NOTES

1. CRS §§ 38-33.3-115, -117. Communities created before July 1, 1992, may elect to be subject to all provisions of CCIOA. *See* CRS § 38-33.3-118.

2. CRS § 38-33.3-117(3).

3. *But see* CRS §§ 38-33.3-116 (providing potential exclusions to the applicability of CCIOA for certain new small cooperatives and small and limited-expense planned communities); -117 (providing potential exclusions to the applicability of CCIOA for certain "large" planned communities); -121 (providing potential exclusions to the applicability of CCIOA for certain nonresidential planned communities).

4. The Condominium Ownership Act (COA), CRS §§ 38-33-101 et seq., provides limited guidance with respect to the preservation of certain development rights for a condominium that was created before July 1, 1992 (a "pre-existing community"). In particular, COA provides that a declaration must contain a "statement of the maximum number of condominium units that may be created by the subdivision or conversion of units in a multiple-unit dwelling owned by the declarant" and a "description of all general common elements which may be conveyed to any person or entity other than the condominium unit owners." *See, e.g.*, CRS § 38-33-105.5(1)(e), (h). Except for these reservations, COA provides no further meaningful guidance concerning the exercise of development rights, which means that the governing documents of the applicable community would control such exercise. Further, development rights binding upon a common interest community created before July 1, 1992, are not subject to the main CCIOA provisions concerning the reservation and exercise of development rights under CRS §§ 38-33.3-205(1)(h), -210, and -201(1).

5. *But see Evergreen Highlands Ass'n v. West*, 73 P.3d 1, 7 (Colo. 2003) (upholding association's implied power to collect assessments under pre-CCIOA covenants); *Frisco Lot 3, LLC v. Giberson Ltd. P'ship, LLLP*, 564 P.3d 1061, 1069–73 (Colo.App. 2024) (analyzing alleged creation of a common interest community before enactment of CCIOA).

6. CRS § 38-33.3-102(1)(c).

7. CRS § 38-33.3-102(1)(a).

8. CRS § 38-33.3-113.

9. CRS § 38-33.3-104.

10. CRS § 38-33.3-103(12).

11. CRS § 38-33.3-103(8). For the sake of brevity, "common interest communities" are referred to as "communities" herein.

12. CRS § 38-33.3-103(13).

13. CRS § 38-33.3-103(30).

14. CRS § 38-33.3-103(8). *See also Hiwan Homeowners Ass'n v. Knotts*, 215 P.3d 1271, 1276–77 (Colo.App. 2009) (holding that a common interest community subject to CCIOA was created where covenants obligated homeowners within a subdivision to pay mandatory fees to the association for the maintenance of real estate within the subdivision, despite there being no common elements or common property); *Pulte Home Corp. v. Countryside Cmty. Ass'n*, 382 P.3d 821, 830 (Colo. 2016) (holding that recording of declaration that did not subject real property to its terms did not create a common interest community).

15. CRS §§ 38-33.3-201(1), -103(13), -205(1), -209(1) ("The requirements of this section shall be deemed satisfied so long as all of the information required by this section is contained in the declaration, a map or a plat, or some combination of any two or all of the three.").

16. *Ryan Ranch Cmty. Ass'n. v. Kelley (Ryan Ranch I)*, 409 P.3d 375, 380 (Colo.App. 2014) ("A declarant may add property to a common interest community that was not included at the time the declaration was recorded by exercising a development right reserved for such a purpose.").

17. CRS § 38-33.3-103(14).

18. *See People v. Patton*, 425 P.3d 1152, 1156 (Colo.App. 2016) (discussing and identifying cases that interpreted statutes' use of the word "means" to indicate legislature's intent to create an exhaustive list versus an expansive list).

19. *Compare* CRS § 38-33.3-103(14) (detailing limited list of development rights that may be exercised by declarant without owner approval and which does not include converting common elements into units) *with* CRS § 38-33.3-312(1) (providing protocol to convey common elements upon at least 67% owners' agreement to the same) *and* CRS § 38-33.3-312(5) (providing that any purported conveyance of a common element in violation of CRS § 38-33.3-312(1) is void).

20. CRS § 38-33.3-103(14).

21. CRS § 38-33.3-103(29).

22. CRS § 38-33.3-103(21.5).

23. CRS § 38-33.3-205(1)(h).

24. CRS § 38-33.3-209(2)(c).

25. CRS § 38-33.3-209(2)(b).

26. CRS § 38-33.3-222.

27. CRS § 38-33.3-207(3).

28. CRS § 38-33.3-209(g.5).

29. CRS § 38-33.3-205(1)(j).

30. CRS § 38-33.3-205(1)(i) ("(I) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards; and (II) A statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate . . . .").

31. CRS § 38-33.3-210(2) (citing requirements set forth in CRS §§ 38-33.3-205, -206, -209).

32. CRS § 38-33.3-210(2) ("This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 38-33.3-205(1)(h).").

33. *See Snowmass Land Co. v. Two Creeks Homeowners Ass'n*, 159 P.3d 662, 663 (Colo. App. 2006) (stating that a "fundamental objective of [CCIOA] is to provide full disclosure to purchasers regarding applicable development rights.").

34. *Silverview at Overlook, LLC v. Overlook at Mt. Crested Butte LLC*, 97 P.3d 252 (Colo.App. 2004).

35. *Id.* at 254.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 255.

40. *Id.* at 257.

41. *Id.* at 255.

42. *Id.* at 256 (citing CRS § 38-33.3-210(2), (5)).

43. *Id.*

44. *See Snowmass Land Co.*, 159 P.3d at 664–65 (holding that, under a previous version of CRS § 38-33.3-209(c), failure to specifically label real estate within a plat as being subject to withdrawal, despite explicit reservations and notes within the declaration and plat that such parcel was subject to withdrawal, was contrary to CCIOA's requirements and thus failed).

45. *See Miller v. Curry*, 203 P.3d 626, 628–29 (Colo.App. 2009) (holding that units purportedly annexed into a community pursuant to improperly reserved development rights were not part of the original common interest community). *See also Arrabelle at Vail Square Residential Condo. Ass'n v. Arrabelle at Vail Square LLC*, 382 P.3d 1275, 1279–80 (Colo.App. 2016) (holding that reservation of development rights under CCIOA to a particular parcel precluded the same parcel from subsequently qualifying for an exception to CCIOA).

46. CRS § 38-33.3-103(14).

47. CRS § 38-33.3-210(1).

48. *Id.*

49. CRS § 38-33.3-217(3).

50. *Id.*

51. *Id.*

52. CRS § 38-33.3-222.

53. CRS §§ 38-33.3-222, -205(1)(d) (requiring that the declaration state "the maximum number of units that the declarant reserves the right to create").

54. *Ryan Ranch I*, 409 P.3d 375; *Ryan Ranch Cmty. Ass'n v. Kelley (Ryan Ranch II)*, 380 P.3d 137 (Colo. 2016).

55. *Ryan Ranch II*, 380 P.3d at 139.

56. *Id.* at 140.

57. *Id.* at 140–41.

58. *Id.* at 141.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Ryan Ranch I*, 409 P.3d at 381.

63. *Id.* at 382.

64. *Ryan Ranch II*, 380 P.3d at 142.

65. *Id.* at 142–44.

66. *Id.*

67. *Id.* at 145–48.

68. *Id.* at 145–46.

69. *Id.* at 146–47.

70. *Id.*

71. CRS 38-33.3-210(1).

72. *Id.*

73. *Id.*

74. *Kroesen v. Shenandoah Homeowners Ass'n*, 461 P.3d 672 (Colo.App. 2020).

75. *Id.* at 675.

76. *Id.*

77. *Id.* at 675–76.

78. *Id.* at 677.

79. *Id.* at 683.

80. *Id.* at 678–79.

81. *Id.* at 679–81.

82. *Id.*

83. *Id.* at 681.

84. CRS § 38-33.3-210(3)(a).

85. CRS § 38-33.3-210(3)(b). *See also* CRS § 38-33.3-213 (outlining procedure for owners to seek to subdivide a unit); CRS § 38-33.3-213(3) ("No subdivision of units shall be effected without the necessary amendments to the declaration, plats, or maps, executed and recorded pursuant to section 38-33.3-217 (3) and (5)."); *Perfect Place, LLC v. Semler*, 426 P.3d 325, 332–34 (Colo. 2018) (holding that the alleged subdivision of a garage unit failed because no documents reflecting the subdivision were recorded as required by CRS §§ 38-33.3-213(3), -217(3) and (5)).

86. CRS § 38-33.3-210(4).

87. CRS § 38-33.3-210(4)(a).

88. CRS § 38-33.3-210(4)(b). *See also* CRS § 38-33.3-218(11) ("Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment to the declaration excluding the real estate from the common interest community prepared, executed, and recorded by the association.").

89. *Vista Ridge Master Homeowners Ass'n v. Arcadia*, 300 P.3d 1004 (Colo.App. 2013).

90. *Id.* at 1005.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* at 1006–07.

97. CRS § 38-33.3-210(4) (emphasis as detailed in *Vista Ridge*, 300 P.3d at 1006).

98. *Vista Ridge*, 300 P.3d at 1006.

99. *Id.*

100. CRS § 38-33.3-210(4)(b); *Vista Ridge*, 300 P.3d at 1006–07.

101. *Vista Ridge*, 300 P.3d at 1007.

102. *Id.* at 1006–07.

103. *Id.* at 1007.

104. *Id.*

105. CRS § 38-33.3-304(1). *See also* CRS § 38-33.3-113 (providing that each "contract or duty governed by [CCIOA] imposes an obligation of good faith in its performance or enforcement").

106. Typically, the private agreement conveying such rights would be executed by the transferor and transferee. CRS § 38-33.3-304(1) requires that the recorded documents evidencing the transfer be executed only by the transferee. This is likely because at the time the document is recorded, the transferor likely no longer has any rights with respect to the conveyed rights.

107. CRS § 38-33.3-304(2), (5).

108. CRS § 38-33.3-304(6) ("Nothing in this section [304] subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this article or the declaration."). *See also* CRS § 38-33.3-104 (providing that the terms of CCIOA "may not be varied by agreement, and rights conferred by [CCIOA] may not be waived").

109. *See* CRS §§ 38-33.3-205(4), (5), -208(3), -209(6), -210, -222.

110. *Compare* CRS § 38-33.3-222 ("[I]f the right is originally reserved in the declaration, the declarant . . . may amend the declaration at any time during as many years as are specified in the declaration to add additional real estate to the common interest community . . . but the area of real estate added to the common interest community pursuant to this section may not exceed ten percent of the total area of the [legally sufficient description in the declaration of the real estate included in the community] and the declarant may not in any event increase the number of units in the common interest community beyond the number stated in the original declaration pursuant to section 38-33.3-205 (1)(d), except as provided in section 38-33.3-217 (4).") with CRS § 38-33.3-210(2) ("Additional development rights not previously reserved may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by section 38-33.3-205 or 38-33.3-206, as the case may be, and, in a condominium or planned community, the plats and maps include all matters required by section 38-33.3-209.").

111. CRS § 38-33.3-217(1).

112. CRS § 38-33.3-217(4)(a).

113. *Vallagio at Inverness Residential Condo. Ass'n v. Metro. Homes, Inc.*, 395 P.3d 788, 792–93 (Colo. 2017). *See also* CRS § 38-33.3-217(7)(d)(I)(c) (providing, in the context of judicial approval of a proposed amendment to the declaration, that the petitioner association would need to issue notice to owners and include a statement whether, inter alia, "declarant entitled by the declaration to vote on the proposed amendment").

114. CRS § 38-33.3-205(1)(h).

115. CRS § 38-33.3-210(5).

116. *Id.*

117. *Id.*