



Terminating Common Interest Communities with Horizontal Boundaries under CCIOA

BY RICHARD LINQUANTI

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This article discusses the termination of common interest communities with horizontal boundaries under the Colorado Common Interest Ownership Act.

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This article reviews some fundamentals of the Colorado Common Interest Ownership Act¹ (CCIOA or Act) concerning the termination of common interest communities (CICs)² with horizontal boundaries. The Act's termination provisions seem straightforward.³ That may be true for planned communities and condominiums where units own the land beneath and the sky above, because normally such

ownership is unaffected upon termination; what changes is simply the community's legal form.⁴ It may also be true for cooperatives, where termination results in a transfer of ownership to tenancy in common with possessory rights.⁵ But complications can arise when a horizontal-boundary condominium or planned community is terminated, particularly if the termination agreement requires the sale of all units as well as the common property.⁶

Termination Generally

Community terminations are not commonplace in Colorado, and currently no relevant cases involve terminations under CCIOA. Terminations may be more likely to occur in the future as CIC improvements age and become too expensive to maintain or replace.⁷ Terminations may also result from other situations (as has occurred in other jurisdictions), such as a major casualty (e.g., a wildfire), where a new project

fails and the purchaser in foreclosure wishes to repurpose the project, or if market conditions provide a strong economic incentive for an investor to acquire the underlying real estate for repurposing or redevelopment.

Termination of a CIC is not inherently good or bad. If an event occurs that causes some unit owners to consider terminating their CIC, they should seek expert advice appropriate to the situation and try to reach consensus on a course of action. Ideally, the best outcome—one that can potentially produce an optimal result for the greatest number of owners in the community—is reached where there is unanimous agreement about whether and how to terminate the CIC and, if a sale of all of the property is involved, how to obtain the best price. Mandatory sale of the property is not always the best solution, and open communication within the CIC may produce alternatives to mandatory sale. For example, the author is familiar with a Colorado resort property where the CIC brought in a developer to increase the project's density and is using the resulting proceeds to update rather than terminate the CIC.

However, owners are driven by different interests. Some owners may find termination an ideal opportunity to liquidate their investment, others may want to sell to an investor looking to force a termination, and still others may not wish to sell their units under any circumstances. Because CCIOA allows a termination agreement adopted by less than all unit owners to mandate a property sale in a CIC where the units have horizontal boundaries, the first step is to determine if the units in a condominium or planned community have horizontal boundaries.

Determining Horizontal Boundaries

If all CIC units have horizontal boundaries, the termination agreement may require all units to be sold,⁸ and a super-majority of owners can force a sale of all units on unwilling CIC owners. Accordingly, CCIOA's termination provisions might result in harm to some owners in a way that is not possible with other forms of CICs.⁹ If some or all units do not have horizontal boundaries, the termination agreement may

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require only the common elements—not the units—to be sold, unless the declaration provides otherwise or all unit owners consent.¹⁰ CCIOA contains no provision for the mandatory sale of property upon the termination of a cooperative. Rather, it converts each unit owner to the owner of an undivided interest in the community as tenants in common with an exclusive right of possession in the apartment.¹¹

CCIOA defines “horizontal boundary” as “a plane of elevation relative to a described benchmark that defines either a lower or an upper dimension of a unit such that the real estate respectively below or above the defined plane is not a part of the unit.”¹² Condominiums typically have horizontal boundaries, creating a unit of air space. Even if a unit has no unit above or below it, condominium declarations usually define units by horizontal boundaries, describing the upper boundary as the unfinished surface of the ceiling and the lower boundary as the unfinished surface of the floor, with the structural spaces above and below these boundaries designated as common elements.¹³

It is possible that the Act did not intend to permit mandatory sale upon termination to apply to properties in which all units have no other units (as opposed to common elements) above or below them. The official comments to the Uniform Common Interest Ownership Act (UCIOA) version upon which CCIOA is based describe projects subject to mandatory sale as “a typical high rise building” as contrasted to units not having horizontal boundaries, “single family homes, for example.”¹⁴ However, CCIOA's provisions are not as narrowly written as the pre-2021 version of UCIOA. If the ground beneath townhouses is a common element in a condominium or is owned by the association in the case of a planned community, units in such communities technically have horizontal boundaries and may be made subject to mandatory sale.

CCIOA's Application to Pre-CCIOA Communities

The properties more likely to be candidates for termination in Colorado are those developed in the 1960s and 1970s where age, under-utilization of density allowances, or the unlocked value of the land are significant factors.¹⁵ This raises the question whether CCIOA's termination section is worth studying now because the termination of communities created before July 1, 1992, when CCIOA became effective, is governed by the Colorado Condominium Act (CCA)¹⁶ rather than CCIOA.¹⁷ But CCA has no specific provisions relating to condominium termination, so the details are left to relevant

provisions in condominium declarations.¹⁸ Further, terminations subject to pre-CCIOA declarations may require unanimous approval, in which case terminations are unlikely, because every CIC unit owner would have to be satisfied with that solution and how to carry it out.

However, CCIOA's "opt-in" provision may be used to allow CCIOA to govern terminations of pre-CCIOA communities and override more strict termination requirements that may be contained in pre-CCIOA declarations.¹⁹ CCIOA allows any community created before its effective date, regardless of its declaration provisions, to opt in to CCIOA with a vote of 67% of persons present at a duly constituted meeting of the members.²⁰ Depending on how many unit owners attend a meeting (in person or by proxy) with minimum quorum requirements, the proposal might be approved by only a minority of all unit owners. Once a pre-CCIOA community opts in, CCIOA's termination and amendment provisions apply.²¹ Therefore, counsel for the condominium or planned community association (association) must understand these provisions before advising the association client about the advantages and disadvantages of opting in to CCIOA.

Termination as a Replacement for Partition

When multiple parties own real property, an owner can file a partition action asking the court to divide the ownership into separate parcels or to sell the property and divide the proceeds among the owners.²² The court has broad discretion to "promote the ends of justice" and "direct the payment and discharge of liens and have the property sold free from any lien or may apportion any lien."²³ The court appoints a disinterested commissioner "to fairly and impartially make partition of the property."²⁴

A CIC is a form of common ownership; its unit owners own the common elements in common, either directly in the case of a condominium²⁵ or indirectly through membership in a planned community association.²⁶ However, as in most states, the Act (unlike the CCA) prohibits partition actions, with only limited exceptions.²⁷ Thus, instead of partition, termination under the Act may be used to force a disposition if

all units have horizontal boundaries. The Act does not provide for judicial supervision of the termination process or appointment of a disinterested party to handle the property disposition. Rather, termination is accomplished through agreement by most (but not necessarily all) unit owners,²⁸ and that agreement may include a mandate to sell all of the units as well as common elements. In addition, a CIC declaration may require approval of all mortgagees to terminate,²⁹ which would likely make approval more difficult to achieve. But if the termination agreement provides sufficient funds to pay all outstanding mortgages in full, lender approval remains feasible.³⁰

The termination may be administered by the condominium association, as trustee for the unit owners,³¹ but that administration is subject to the termination agreement, whose terms are set by a number of owners, not the association. Consequently, once the association's attorney learns that termination is "in the air," counsel should educate the board of directors about how CCIOA terminations work and suggest avenues for early and open communication among CIC members to resolve the situation. Once the requisite number of unit owners reaches a termination agreement, all owners may be locked into its terms.

Unit Owners' Approval of the Termination Agreement

A termination agreement is effective upon its execution or ratification by 67% of the allocated votes in the CIC or any larger percentage the declaration specifies.³² Because votes may be allocated in any disclosed manner that does not discriminate in favor of the developer,³³ 67% of the votes may be held by more or fewer than 67% of the number of units when, for example, one person owns more than one unit. Colorado, Texas, and Idaho are the only states that require votes of less than 80% to terminate a condominium; the majority of states and UCIOA require 80%. By the author's count, at least 15 states require unanimous approval to terminate. A lower voting threshold may have significant consequences. For example, a would-be redeveloper could purchase a sufficient number of units at negotiated prices

to allow it to exercise the votes to approve a termination agreement to acquire the remaining units by mandatory sale.

A Closer Look at Voting under CCIOA

The Act makes the 67% threshold required to ratify a termination agreement a minimum because it allows "any larger percentage the declaration specifies."³⁴ However, this concept of a potentially larger voting percentage is an illusion, because the Act allows amendment of the declaration by no more than 67% of the allocated votes.³⁵ Therefore, once an owner owns or controls 67% of the votes, it can amend any declaration provision that requires a termination agreement to be approved by more than 67%. These amendment mechanics make the 67% floor for termination approval also a ceiling.

The Act somewhat limits this concentration of power by deleting the amendment ceiling for "any common interest community in which one owner, by virtue of the declaration, bylaws, or other governing documents of the association, is allocated sixty-seven percent or more of the votes in the association."³⁶ But no such limit applies to a vote to terminate, so one owner of a sufficient number of units can control the termination. In any event, the meaning of "one owner" is untested by case law. Therefore, it may be permissible for a termination sponsor to acquire units through two or more legally separate entities or by taking title to units through various family members, or for investors in the redevelopment to each acquire one or more units and act in concert to approve a termination agreement, or for a developer to provide in a unit purchase agreement that the unrelated seller will join in the termination agreement as a precondition to closing.

CCIOA allows a declaration to require unanimous lender approval for "actions."³⁷ This may include not only declaration amendments but also execution of a termination agreement by unit owners. Unit owners who wish to amend a declaration to reduce the voting percentages for termination or execution of a termination agreement may therefore face a challenging hurdle. The somewhat cumbersome judicial amendment procedure in CRS § 38-33-217(7) may be used to overcome lender resistance to



amending the declaration to lower the termination threshold, especially if the proposed amendment requires full payment of all mortgages so that lenders are not prejudiced by the amendment. However, no such procedure exists to overcome lender resistance to executing a termination agreement.³⁸

Treatment of Unit Owners

When a termination agreement that involves the sale of property is approved and recorded, the association becomes the trustee for all unit owners and title to the property to be sold vests in it.³⁹ Unit owners must be treated uniformly in the valuation of their units for allocation purposes and may object to the valuations.⁴⁰ And it would be reasonable to expect that all unit owners would have the same rights or options regarding occupancy following termination and prior to closing a sale of the property.⁴¹

But uniformity of treatment is only applicable to acts done pursuant to the termination agreement itself. Where one or more owners

have a vested interest in the termination and mandatory sale, CCIOA does not explicitly protect unit owners against disparate treatment with regard to actions occurring before the termination agreement or independently of it, and the Act contains no disclosure requirements concerning extra-termination transactions to make such occurrences more transparent.⁴² In other words, some unit owners may end up receiving better treatment—such as more money—from a termination advocate, so long as the action is taken outside the termination agreement administered by the association. No law prevents someone from buying individual units at a premium until acquiring a critical mass of units and then adopting a termination agreement that provides less compensation to the remaining unit owners. However, general principles of equity might prevent such occurrence.

The Termination Agreement

The termination agreement, or a ratification thereof, must be executed with the formalities of

a deed.⁴³ UCIOA set this formalities requirement because a termination agreement is “a transfer of an interest in real estate.”⁴⁴

CCIOA has no provision for a meeting of unit owners to discuss termination before it becomes an accomplished fact. In fact, CCIOA does not require every unit owner to receive a copy of the termination agreement before it is executed or ratified by the required number of unit owners to adopt it.⁴⁵ Termination is arguably a corporate action, subject to the notice and meeting requirements of the Colorado Nonprofit Corporations Act, in addition to CCIOA's approval and execution requirements. On the other hand, UCIOA's characterization of the termination agreement as a conveyance, and its description of an “agreement” rather than a “plan,” may support an argument that no action by the corporate body is required, except to administer the agreement upon its execution. Although the association is not technically dissolved by a termination agreement, CCIOA seems clear that the association's continued

existence after sale of the property and distribution of the proceeds has no practical effect.⁴⁶

CCIOA has only one requirement for the contents of a termination agreement: it must state a date by which it must be executed or ratified and duly recorded in all applicable counties, failing which the agreement becomes void.⁴⁷ However, a termination agreement that mandates a property sale must also state the minimum sale terms.⁴⁸ CCIOA does not define “terms of sale,” but at a minimum such terms arguably include the requirements for a valid contract, such as price (or the pricing mechanism, such as appraisal), the form of payment, and closing date parameters.

The degree of specificity of termination agreements will limit the association’s board of directors’ discretion. To the extent that the association’s board makes decisions, CCIOA limits fiduciary responsibilities to those directors appointed by a declarant. Because declarant-appointed directors would likely not be in office when a termination agreement is adopted, a complainant would have to meet the difficult liability standard of proving that acts of independent directors were wanton and willful.⁴⁹

If the CIC contains only units with horizontal boundaries, the termination agreement may require the sale of all units and all common elements.⁵⁰ If the termination agreement does not require the sale of all units and all common elements, it must presumably establish some mechanism for governing the collective units to the extent they are interdependent, for example, by addressing matters such as cross-easements and cost-sharing. For practical purposes, this means creating a new CIC.

Upon the effective termination date, title to all property vests in the association as trustee for all unit owners, and the association, as trustee, executes any purchase contract and conveyance documents.⁵¹

Unit Valuation

As stated above, a termination agreement that mandates the sale of the property must state the minimum sale terms. There are at least two technical considerations in setting the price as part of such terms. The first is whether to provide sufficient proceeds to each unit to permit the

discharge of all monetary liens against each unit, including the discharge of that unit’s allocated share of lien liability for an association creditor.⁵² CCIOA provides that allocated sales proceeds are paid to lienholders “as their interests may appear,”⁵³ but to the extent those proceeds are not sufficient to discharge the lien, the association’s sale will be subject to those liens⁵⁴ and the purchase price of the property is likely to be adversely affected.

The second consideration is what importance, if any, to give to the appraised value of the units. The Act requires that the units be valued by one or more independent appraisers⁵⁵ but does not require use of the collective values to set a minimum purchase price of the entire property, nor does a unit’s appraised value set a specific amount of compensation to be paid for that unit. CCIOA does not provide each individual owner the right to dispute an appraisal of that owner’s unit⁵⁶ but instead only permits 25% of the allocated votes in the association to reject the appraisals in the aggregate.⁵⁷

CCIOA uses the appraisals only to set the percentage interest of unit owners in the sale proceeds. But the existence of mandatory appraisals raises the practical question whether the termination agreement should use these appraisals, in the aggregate, as the minimum purchase price for the property. On the one hand, appraisals do not claim to be an assurance of the price a property will bring in an actual sale. Especially where a sale does not involve a controlling would-be developer—that is, a public sale—the Act may build in an undervaluation of the property as a whole. This is because the appraisals are made on a unit-by-unit basis (including each unit’s share in the common elements), not on the property as a whole, and the values are as of “immediately before the termination,”⁵⁸ meaning the locked-in value of the land to a redeveloper may not be recognized. On the other hand, and for that same reason, a party that wants to buy the property may want to use appraisals as the contract price in a private sale. Accordingly, because appraisals are independent and are mandated by the Act, it is unlikely that using them to establish a purchase price would be subject to challenge for being inequitable or even unconscionable.⁵⁹

Monetary Liens

CCIOA does not expressly address what happens to a lien against a unit when that unit ceases to be a separate real property interest. It is possible, but not clear under CCIOA, that the liens become a charge against the entire property until and unless they are discharged by payment of property sales proceeds.

As noted above, the Act provides that termination is effective upon recordation. If property must be sold pursuant to a termination agreement, title to all of the property then vests in the association.⁶⁰ This appears to merge all of the separate titles into one title. It follows that the liens all attach to the one unified title because separate titles no longer exist. Alternatively, the liens might remain against individual portions of the unified title: the air space of the former units described by the engineer in the declaration that established the horizontal boundaries.⁶¹ This analysis is complicated by the fact that a lien formerly attached to the unit’s undivided interest in the common elements, but because title to the common elements now rests in the association, the common elements are no longer subject to undivided interests.

Nevertheless, which property or properties that liens attach to after termination is mostly an academic issue because when the association sells property and distributes the sales proceeds to lienholders according to their priority, in most situations all liens will be discharged. But the lien’s status becomes relevant if the sales proceeds allocated to a unit are insufficient to pay in full the liens against that unit. This can occur in a down market or where a substantial judgment lien was filed against a unit owner.

UCIOA comment 1B includes an example where a first mortgagee receives insufficient funds and takes a \$600 “loss” for the mortgagee to recover from the borrower.⁶² The comment appears to assume that the lienholder has only a monetary claim for a deficiency. However, neither UCIOA nor CCIOA provides for a lien release against a unit and its undivided interest in the common elements, or for transfer of the lien solely to sales proceeds, so the example’s implicit assumption appears unsupported.

The bottom line is if the allocated proceeds are insufficient to satisfy all of a unit’s liens,

the unit owner may face personal liability to the lienholder or income tax liability on the debt forgiveness.

Continued Rights Regarding Occupancy

CCIOA states that the termination agreement may provide for continued possession of the owners until the property is sold.⁶³ Thus, by implication, the termination agreement may require unit owners to vacate any time after the agreement is executed and recorded, even if the property has not yet been sold. The only caveat is that the unit owners are not liable to pay assessments once they vacate the unit.⁶⁴ Depending on the terms of the termination agreement, owners may have fewer possession and relocation rights upon termination than the CCA provides to tenants in an apartment conversion.⁶⁵

The existence of leased units could interfere with a termination agreement's provision to dispossess the unit owner. Because CCIOA does not terminate existing leases, title transfer by law to the termination trustee and by conveyance to a purchaser from the termination trustee may be subject to leases that pre-date the recording of the termination, especially if the lease or a memorandum thereof is in the public records or the records of the association.⁶⁶

Conclusion

CCIOA provides much flexibility for terminating CICs with horizontal boundaries. But this flexibility leaves open some important legal questions in some termination scenarios, and there is no expedited judicial process to resolve legal challenges. Future legislative provisions could provide clarity by, for example, including the minimum vote required for termination, establishing the role of appraisals in setting a minimum price upon a mandatory sale, providing a mechanism for transparency in (and advance notice of) the potential termination, and establishing a minimum occupancy period for owners who do not consent to the mandatory sale of their units. In the meantime, negotiation and compromise present a practical course for resolving termination disputes. 



Richard Linqunti is of counsel to Carlton Fields, P.A. and resides in Denver. He practices land use and business law and is a member of the Colorado and Florida Bars. Linqunti is a former chair of the Colorado Real Estate Section Council and is board certified in Florida for Condominiums and Planned Communities.

Coordinating Editors: Christopher Bryan, cbryan@garfieldhecht.com; Adam Aldrich, adam@aldrichlegal.com; Reagan Larkin, rlarkin@messner.com; Eric Snyder, esnyder@wsmtlw.com; Amy Brimah, amy@brimahlaw.com

NOTES

1. CRS title 38, ch. 33.3.
2. A common interest community includes planned communities, cooperatives, and condominiums. CRS § 38-33.3-103(8), (9), (10), and (22).
3. CRS § 38-33.3-218.
4. CRS § 38-33.3-218(4).
5. CRS § 38-33.3-218(6)(b).
6. Section 218(3) of the Act provides in part: "In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all of the common elements and units of the common interest community must be sold following termination. . . ." CCIOA is based on the Uniform Common Interest Ownership Act (UCIOA), promulgated by the Uniform Laws Commissioners. In 2021, the Commissioners adopted revisions to UCIOA § 2-118(c) to allow a termination agreement to mandate the sale of property in any CIC, even those without horizontal boundaries. And new UCIOA § 2-118(m) allows the termination agreement to require the sale of less than all of the CIC property. The Colorado legislature has not taken up these changes as of this writing.
7. A 2021 article demonstrates how the aging of condominiums might lead to more terminations in the future. Garfield, "Condominium Obsolescence: The Final Act or a New Beginning?," 49 *Colo. Law.* 42 (Jan. 2020).
8. CRS § 38-33.3-218(3).
9. See *supra* note 6 concerning changes in UCIOA that would significantly expand CICs subject to termination agreements containing mandatory sale provisions.
10. CRS § 38-33.3-218(4).
11. CRS § 38-33.3-218(6)(b).
12. CRS § 38-33.3-103(16.5).
13. This is also the default boundary in CRS § 38-33.3-202(1)(a) if the declaration uses "floor" or "ceiling" as a boundary. "Except as provided by the declaration: . . . If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements."
14. UCIOA § 2-118, cmt. 6.
15. A substantial casualty is another possible trigger for termination. Although CICs have insurance that may provide sufficient proceeds to rebuild units, owners may not want to rebuild or may prefer to receive proceeds that are a windfall in a down real estate market. Another possible and less obvious trigger is the market failure of a new project where most units remain unsold and the construction lender forecloses. In positioning the foreclosed collateral for market, the lender may conclude that it can extract the most value if it can sell the entire property.
16. CRS §§ 38-33-101 et seq.
17. CRS § 38-33.3-117(1).
18. CCA does not prohibit a unit owner from bringing a partition action, but it invites the declaration to make appropriate provision for circumstances that might result in termination. CRS § 38-33-105(2) states in relevant part: "To the extent that any such declaration . . . provides for . . . the appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence, any rule of law to the contrary notwithstanding, the same shall be considered as covenants running with the land binding upon all condominium owners and their successors in interest."
19. At first blush, it might appear that *DA Mtn. Rentals, LLC v. Lodge at Lionshead Phase III Condominium Ass'n*, 409 P.3d 564 (Colo.App. 2016), may open the door to enforcing a pre-CCIOA declaration's more strict voting approval requirements, that is, as the Court pointed out, only if the CIC does not opt in to CCIOA. In such a case CRS § 38-33.3-120(1) allows amendment according to the more rigid requirements of a pre-CCIOA declaration, notwithstanding that CRS § 38-33.3-

117(1.5)(d) makes certain CCIOA amendment provisions in CRS § 38-33.3-217(1) applicable to all pre-CCIOA communities. Notably, CRS § 38-33.3-117(1)(h) also makes applicable to all pre-CCIOA communities the CCIOA provision for court approval of amendments upon a 50% vote notwithstanding the provisions of a declaration. CRS § 38-33.3-217(7)(a)(III).

20. CRS § 38-33.3-118(2)(c).

21. CRS § 38-33.3-118(1).

22. CRS title 38, art. 28.

23. CRS § 38-28-110.

24. CRS § 38-28-105.

25. CRS § 38-33.3-103(9).

26. CRS § 38-33.3-103(5)(b).

27. CRS § 38-33.3-207(6), which provides an exception only for the sale or encumbrance of common elements pursuant to CRS § 38-33.3-312.

28. CRS § 38-33.3-218(1).

29. CRS § 38-33.3-219(1).

30. Lender approval might also be obtained if the owner of a bulk of units has a mortgage on those units sufficient to satisfy the lender-consent requirements.

31. CRS § 38-33.3-218(5).

32. CRS § 38-33.3-218(1). The percentage specified in the declaration may be lower than 67% if all units are dedicated to nonresidential uses. *Id.*

33. CRS § 38-33.3-207(2).

34. CRS § 38-33.3-218(1).

35. CRS § 38-33.3-217(1)(a)(I). It may be possible to amend the declaration to reduce the termination agreement requirement to 67% by a vote of only 50% of the unit owners using the judicial amendment procedure in CRS § 38-33.3-217(7).

36. CRS § 38-33.3-217(4)(b).

37. CRS § 38-33.3-219(1) states in relevant part: "The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions"

38. If the termination agreement provides for payment in full of all mortgagees, and if the requisite lender approval cannot be obtained, termination proponents might resist a mortgagee's efforts to assert its approval rights by arguing that the lender has no continuing interest, because lenders will have no mortgage interest once they are paid. *See Restatement (Third) of Property (Servitudes) § 8.1* (Am. Law Inst. 2000) ("A person who holds the benefit of a servitude under any provision of this Restatement has a legal right to enforce the servitude. Ownership of land intended to benefit from enforcement of the servitude is not a prerequisite to enforcement, but a person who holds the benefit of a covenant in gross must establish a legitimate interest in enforcing the covenant.").

39. CRS § 38-33.3-218(5).

40. CRS § 38-33.3-217(7).

41. CRS § 38-33.3-218(5).

42. Presumably, the consideration paid for units closed up to a few weeks before termination would be reflected in the public records and therefore in any termination appraisals. However, appraisals are only required to be used for proportionate allocation of proceeds, not to establish a purchase price. CRS § 38-33.3-218(5).

43. CRS § 38-33.3-218(2).

44. UCIOA § 2-118, cmt. 5.

45. The only notice requirement relates to planned communities and applies to local governments in which the community is located, and then only if the planned community is required to exist by a (presumably government-approved) development or site plan. CRS § 38-33.3-218(1.5).

46. CRS § 38-33.3-218(5) states in relevant part: "Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all the powers it had before termination." (emphasis added).

47. CRS § 38-33.3-218(2).

48. CRS § 38-33.3-218(3).

49. CRS § 38-33.3-303(2) provides:

Except as otherwise provided in subsection (2.5) of this section:

(a) If appointed by the declarant, in the performance of their duties, the officers and members of the executive board are required to exercise the care required of fiduciaries of the unit owners.

(b) If not appointed by the declarant, no member of the executive board and no officer shall be liable for actions taken or omissions made in the performance of such member's duties except for wanton and willful acts or omissions.

50. CRS § 38-33.3-218(3). In communities that have only some units with horizontal boundaries, no units, even those with horizontal boundaries, are subject to mandatory sale unless the declaration provides otherwise or all unit owners consent. But even in such a community all common elements are subject to mandatory sale if the termination agreement so provides. CRS § 38-33.3-218(4).

51. CRS § 38-33.3-218(5).

52. CRS § 38-33.3-218(8) states the rules relating to liens and priorities of association creditors.

53. CRS § 38-33.3-218(5).

54. Upon termination, individual units of ownership no longer exist. Consequently, a lien against a unit presumably transforms into a lien against the entire property or, at least, a percentage undivided interest in the entire property.

55. CRS § 38-33.3-218(10)(a).

56. The 2021 amendments to UCIOA provide a new mechanism for a unit owner to object to the appraised value of that one unit. UCIOA § 2-118(j)(2).

57. CRS § 38-33.3-218(10)(a). CCIOA does not say what happens if the appraisals are so

rejected. But because this provision relates only to the proportionate allocation of proceeds rather than the sale price of the property, presumably the association could proceed with the sale but would have to appraise the property again before distributions are made until 25% of the votes do not reject them.

58. CRS § 38-33.3-218(10)(a).

59. CRS § 38-33.3-112. In North Carolina, where the UCIOA has been adopted, a court held that using the aggregate of the units' appraised values to determine the terms of sale upon the condominium's termination was not deceptive or unfair where the termination agreement provided for sale of the property to the investor-owned for 80% of the units. *Howe v. Links Club Condominium Ass'n, Inc.*, 823 S.E.2d 439 (N.C.Ct.App. 2018).

60. CRS § 38-33.3-218(5).

61. CRS §§ 38-32-101 et seq. recognizes estates above the surface as valid estates in real property that can be conveyed, mortgaged, and so forth.

62. It is difficult to interpret Example 1B and other examples in the comment because they posit losses to some lienholders due to the superior priority of other lien creditors when the individual liens against individual assets are aggregated. Many examples indicate a loss to the lowest priority lien holder, which suggests that the aggregate property is sold free and clear of all liens, leaving the lienholder to either take a loss or pursue the hapless unit owner for the deficiency. However, the text does not state that the property can be sold free and clear or that the terms of sale in the agreement may so provide.

63. CRS § 38-33.3-218(5) provides: "Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit."

64. *Id.* ("During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this article or the declaration").

65. CRS § 38-33-112(3), under which the tenant has a minimum continued occupancy period of 90 days or the longer time remaining under the lease. A converter may secure the agreement of a tenant to quit possession sooner than 90 days only by paying certain relocation expenses of the tenant. CRS § 38-33-112(4).

66. *Restatement (Second) of Property* § 15.1 Landlord-Tenant (Am. Law Inst. 1977).