

DISTRICT COURT, COUNTY OF PITKIN,
STATE OF COLORADO

Court Address: 506 E. Main, Suite 300
Aspen, CO 81611

Phone Number: (970) 925-7635

Petitioner:

The Centennial Owners' Association,
a Colorado nonprofit corporation

Attorney: David A. Firmin, Esq., #29988
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Atty. Reg. #: 29988

▲ COURT USE ONLY ▲

Case Number: 2015 CV 030059

Div.: 5 Ctrm.:

**NOTICE OF: (1) PETITION (2) HEARING AND (3) NOTICE OF OBJECTION
RIGHTS RELATED TO THE PROPOSED AMENDED AND RESTATED
DECLARATION [UNDER C.R.S § 38-33.3-217(7)]**

The Centennial Owners' Association, a Colorado nonprofit corporation (the "Petitioner"), by and through its attorneys, HindmanSanchez P.C., hereby notifies the Owners in Centennial, all first lien lenders to the Owners and all other interested parties, as follows:

1. Colorado statute 38-33.3-217(7), a part of the Colorado Common Interest Ownership Act, allows Colorado District Courts a special restricted ability to approve amendments to the Condominium Declaration for The Centennial Condominium ("Declaration" or "existing Declaration").

2. By this Notice, Petitioner gives notice of the Petition it has filed, of the objection rights of Owners, lenders, declarant and others, as allowed by statute (and as set forth in this Notice) and also of a hearing date on the Petition to be held on Tuesday, July 7, 2015 at 11:00 a.m. in Division 5 of the District Court at 506 E. Main, Suite 300, Aspen, CO 81611.

3. Interested Owners, first lien lenders to Owners and other interested parties may attend this hearing.

4. No Owner, lender or interested party is required to attend this hearing.

5. The Petition can be defeated by: (a) written objection filed by any declarant entitled by the Declaration to vote on the proposed amendment; (b) written objection filed by the Federal Housing Administration (if approval is required from this agency); (c) written objection filed by the Veterans Administration (if approval is required from this agency); (d) written objections filed by 33% or more of the Owners entitled by the Declaration to vote on the proposed amendment; or (e) written objections filed by 33% or more of the lenders that hold a security interest in one or more Units and are entitled by the Declaration to vote on the proposed amendment.

6. The Court may grant the Petition and approve and order the proposed amendment to the Declaration unless sufficient written objections are filed with the Court prior to the hearing.

7. State statute allows the Petitioner to apply to the District Court to amend the existing Declaration, by Court order, after Petitioner has taken the following steps:

- (a) a proposed amendment to the existing Declaration has been prepared;
- (b) all Owners have been sent at least two notices (by any means consistent with the Colorado Revised Nonprofit Corporation Act) of the proposed amendment from the Association;
- (c) Petitioner has held at least one meeting (called and held in accordance with the Petitioner's governing documents: the Declaration, Articles of Incorporation and Bylaws) to discuss the proposed amendment; and
- (d) at least half the Owners required under the existing Declaration have voted for the proposed amendment (i.e., with an existing approval requirement of Owners representing a majority of the votes in the Association currently required, the procedure of petitioning the Court for approval of the proposed amendment could begin once 25% of the votes in the Association have voted for the proposed amendment).

8. The Petitioner has obtained approval from approximately 64% of the votes in the Association, which approval is over half of the existing Declaration's required approval of Owners representing a majority of the votes in the Association.

9. Petitioner has NOT obtained approval from 100% of the first mortgagees as required under the existing Declaration.

10. To comply with Colorado law and to obtain approval on behalf of all first mortgagees, Petitioner has filed a Petition with this Court and seeks the Court's approval of the proposed amendments to the existing Declaration (which amendments are titled the "Amended and Restated Condominium Declaration for The Centennial Condominium").

11. Petitioner has complied with all other requirements of the statute, allowing Petitioner to file its Petition with this Court.

12. A copy of the Petition without exhibits, as filed May 11, 2015 is attached and incorporated by reference.

13. By this Notice, Petitioner gives notice of the Petition.

14. After the Petition was filed, the Court set a hearing date on the Petition to be held on Tuesday, July 7, 2015 at 11:00 a.m. in Division 5 of the District Court at 506 E. Main, Suite 300, Aspen, CO 81611.

15. By this Notice, Petitioner gives notice of this scheduled hearing.

16. Within ten (10) days after the hearing date was set, the Petitioner has sent this Notice of Petition and Hearing, to all Owners by first-class mail, to all first lien lenders of the Owners and to other interested parties, as set forth in a Certificate of Mailing filed with the Court.

17. Owners, lenders, the Declarant and others (as allowed by statute) have a right to object to the Court's proposed approval of the Proposed Amended and Restated Declaration.

18. Petitioner seeks court approval of the proposed amendments.

DATED this 15th day of May, 2015.

Respectfully submitted,

HindmanSanchez P.C.

[Original Signature on File]

S/ David A. Firmin

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5610 Ward Road, Suite 300

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(303) 432-9999

ATTORNEYS FOR PETITIONER

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Div.: Ctrm.:

**PETITION FOR COURT APPROVAL OF PROPOSED AMENDED AND RESTATED
DECLARATION PURSUANT TO C.R.S. §38-33.3-217(7)**

COMES NOW The Centennial Owners' Association, a Colorado nonprofit corporation (the "Association"), by and through its attorneys, HindmanSanchez P.C., and requests that the District Court for Pitkin County, Colorado grant and approve the following petition pursuant to Colorado Revised Statute, Section 38-33.3-217(7)(e).

INTRODUCTION

The Association is a condominium owners' association established and presently governed by:

- (a) the Condominium Declaration for The Centennial Condominium, recorded in the real property records of Pitkin County, Colorado, at Reception No. 262953 in Book 474 at Page 479, on October 3, 1984, as amended and supplemented ("Declaration");

- (b) the Amended and Restated Bylaws of The Centennial Owners' Association; and
- (c) the Amended and Restated Articles of Incorporation for The Centennial Owners' Association, filed with the Colorado Secretary of State on April 8, 2014,

all of which are attached hereto and incorporated by reference in Exhibit "A".

1. The Association is a common interest community as defined by the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-103(8).
1. The Petition process of §38-33.3-217(7) is applicable to the Association and the Centennial community.
2. The Association seeks Court approval of a proposed Amended and Restated Condominium Declaration for The Centennial Condominium (the "Proposed Amended and Restated Declaration") pursuant to C.R.S. §38-33.3-217(7) because it has been unable to obtain the mortgagee approval for amendments required by its governing documents. The Association has obtained approval from Owners holding 64% of the total votes in the Association, which approval percentage exceeds the current Declaration's required approval of a majority of the total votes in the Association.
3. Petitioner has not obtained approval from 100% of the first mortgagees as required under the existing Declaration.
4. The Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et seq.* ("CCIOA"), establishes a petition process by which the Association may petition the District Court for the County in which the common interest community is located for approval of the proposed amendment to the Declaration. The process of the statute requires the Association to submit a summary of the following information to the Court:
 - (a) the amendment process required by the existing Declaration;
 - (b) the proposed amendment to the existing Declaration;
 - (c) the effect of and reason for the proposed amendment, including circumstances which make the amendment necessary or advisable;

- (d) the results of any vote taken with respect to the proposed amendment; and
- (e) any other matters that will be useful to the Court in deciding whether to grant the petition.

See C.R.S. §38-33.3-217(7)(b)(I).

5. Additionally, the Association must submit to the Court the following exhibits:
 - (a) The existing Declaration as originally recorded and any amendments to the existing Declaration; (See a portion of Exhibit "A")
 - (b) The text of the proposed amendment; (See Exhibit "B")
 - (c) Copies of the prior notices required to be sent; (See Exhibit "C"), and
 - (d) Any other documents that the Association believes will be useful to the Court in deciding whether to grant the petition (See Exhibit "D").

See C.R.S. §38-33.3-217(7)(b)(II).

6. Within 3 days of filing of this Petition, the Court is required to schedule a hearing no less than 45 days and no more than 60 days after the filing of the Petition. See C.R.S. §38-33.3-217(7)(c).
7. No later than 10 days after the date for hearing a petition is set, the Association is required to provide notice to all Owners, lenders, the Federal Housing Administration and the Veterans Administration (if they are entitled to vote on the proposed amendment), and any declarant. The Association must then file with the Court the list of names and addresses of the persons and entities who have been notified of the Petition and a copy of the notice.
8. At the hearing, the Court is required to grant the Petition if:

- (a) No more than 33% of the Owners or lenders entitled by the Declaration to vote have filed written objections to the proposed amendments with the Court prior to the hearing;
- (b) Neither the Federal Housing Administration nor the Veterans Administration filed written objections to the proposed amendments with the Court prior to the hearing, if they are entitled to approve the proposed amendment;
- (c) No declarant has filed written objections to the proposed amendments with the Court prior to the hearing;
- (d) The proposed amendments do not terminate the Declaration; and
- (e) The proposed amendments do not change the allocated interests of the Owners (percentage ownership of common elements, percentage share of the common expense liability, and votes allocated to each unit).

See C.R.S. §38-33.3-217(7)(e).

SUMMARY PURSUANT TO SECTION 217(7)(b)(I)

Process for Amending the Declaration

- 9. Section 38-33.3-217(7)(b)(I)(A) requires the Association to summarize the amendment procedures required by the existing Declaration.
- 10. The existing Declaration ("Declaration"), see a portion of Exhibit "A", provides, in Section 7.01, that the Declaration may be amended by a written instrument agreed to by a majority of the total votes in the Association and at 100% of the first mortgage holders of any recorded mortgage or deed of trust covering or affecting the property.

Proposed Amendments and Effect and Reason for the Proposed Amendments

- 11. Sections 38-33.3-217(7)(b)(I)(B) and 38-33.3-217(7)(b)(1)(C) require the Association to summarize the proposed amendments and explain the effect and reason for the amendments.

12. The reasons and purposes of the Proposed Amended and Restated Declaration are to remove unreasonable restrictions on the Community, remove developer "boilerplate" language that is no longer applicable to the Community, remove provisions that do not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, add provisions that provide the proper tools for the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions.
13. The Association has proposed, and the effect of the Proposed Amended and Restated Declaration would be, that the provisions contained within the Proposed Amended and Restated Declaration would replace in its entirety and supercede the existing Declaration. A copy of the Proposed Amended and Restated Declaration is attached as Exhibit "B" hereto and incorporated by reference.
14. The Proposed Amended and Restated Declaration reflects a number of proposed, significant changes. These changes include the following:
 - (a) The Association's documents would be brought into compliance with the Colorado Common Interest Ownership Act to the extent this Act is applicable to common interest communities created prior to July 1, 1992. These revisions will provide the Board of the Association, the Association and Owners with broader rights and protections under Colorado law. Additionally, in several instances, additional provisions of the Act which the Association believes will assist in the administration and operation of the community are proposed to be adopted.
 - (b) The Declarant's rights and voting classes would be removed because the Declarant no longer owns any unit and, by claim of the Association, is no longer entitled to exercise these rights.
 - (c) The first mortgagee rights would be brought into compliance with secondary lending market requirements, such as FNMA and FHMLC. The first mortgagee consent requirement for any future amendments would be lowered from 100% of all first mortgagees to 51% of the Eligible Mortgage Holders.
 - (d) The assessment provisions would be simplified and clarified.
 - (e) Maintenance responsibilities would be clarified and expanded to better suit the needs and practices of the Community.

- (f) The use restrictions would be updated to comply with Colorado law and be expanded to better suit the needs and practices of the Community.
- (g) The proposed amendments would update and clarify insurance provisions.

The Results of the Vote Taken

- 15. Section 7.01 of the Declaration currently requires that a majority of the total votes in the Association and 100% of the first mortgagees approve amendments to the Declaration.
- 16. To date, the Association has obtained approval from Owners representing 64% of the total votes in the Association.
- 17. The Association has obtained mortgagee approval from all mortgage holders except for 24 mortgagees.

CONCLUSION

- 18. The Association has complied with the notice, meeting and other requirements set forth in Section 38-33.3-217(7)(a). The Association notified its Owners of the Proposed Amended and Restated Declaration in the May 2013, June 2013, November 2013 and December 2013 Association newsletters. The proposed amendments were voted on at the December 3, 2013 annual meeting. See Exhibit "C" attached hereto and incorporated by reference.
- 19. The Proposed Amended and Restated Declaration was presented to the Owners and discussed at length at special meeting of the Owners of the Association held on June 7, 2013 and at the Association's annual meeting held December 3, 2013. See minutes contained in Exhibit "D" attached hereto and incorporated by reference.
- 20. Members holding at least 50% of the votes required pursuant to Section 38-33.3-217(7)(a)(III) have approved the Proposed Amended and Restated Declaration. With the votes to date, Owners representing 64% of the total votes in the Association have approved the Proposed Amended and Restated Declaration. Section 7.01 of the Declaration requires approval from a majority of the total votes in the Association of the Owners.

21. Neither the Federal Housing Administration nor the Veterans Administration is required to approve the Proposed Amended and Restated Declaration.
22. The Proposed Amended and Restated Declaration does not terminate the Declaration or change the allocated interests of the Owners.

WHEREFORE, the Association respectfully requests that this Court:

1. Set a date, within three (3) days of the filing of this Petition, for a hearing, at least 45 days but not more than 60 days from the date of the filing of the Petition, as required by Section 38-33.3-217(7)(c);
2. Conduct a hearing on the date set by the Court, or as continued or reset, to determine:
 - (a) Whether the Association has complied with the requirements of Section 38-33.3-217(7);
 - (b) Whether more than 33% of the Owners and/or lenders holding security interests on Units within the Association have objected to the petition as required in Sections 38-33.3-217(7)(e)(II) and (V); and
 - (c) Whether the Declarant or any other party with a right, has filed a written objection to the Petition pursuant to Section 38-33.3-217(7)(e).
3. After the hearing, enter an Order in favor of the Association approving the Proposed Amended and Restated Declaration and requiring the Association to record the court approved Amended and Restated Declaration in the real property records of Pitkin County, Colorado as required pursuant to Section 38-33.3-217(7)(f).

DATED this 11th of MAY, 2015.

Respectfully submitted,

HindmanSanchez P.C.

[Original Signature on File]

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ATTORNEYS FOR PETITIONER

Plaintiff's Address:

Board of Directors

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