becomes a part of the grant. Radio San Juan, Inc. v. Baker, 31 Colo. App. 151, 498 P.2d 957 (1972).

Rule 105.1. Spurious Lien or Document

(a) Petition; Contents, Order to Show Cause. Any person whose real or personal property is affected by a spurious lien or spurious document, as defined by law, may file a petition in the district court in the county in which the lien or document was recorded or filed, or in the district court for the county in which affected real property is located, for an order to show cause why the lien or document should not be declared invalid. The petition, which may also be brought as a counterclaim or a cross-claim in a pending action, shall set forth a concise statement of the facts upon which the petition is based, shall be supported by the affidavit of the petitioner or the petitioner's attorney, and shall be accompanied by a copy of the lien or document as recorded or filed in the public records. The order to show cause may be granted ex parte and shall:

(1) Direct any lien claimant and any person who recorded or filed the lien or document to appear as respondent before the court at a time and place certain not less than 14 days nor more than 21 days after service of the order to show cause why the lien or document should not be declared invalid and why such other relief provided for by statute should not be granted;

(2) State that if the respondent fails to appear at the time and place specified, the lien or document, if found by the court to be spurious, will be declared invalid and released; and

(3) State that the court shall award costs, including reasonable attorney fees, to the prevailing party.

(b) Notice; Service. The petitioner shall issue a notice to respondent setting forth the time and place for the hearing on the show cause order, which hearing shall be set not less than 14 days nor more than 21 days from service of the show cause order, and shall advise respondent of the right to file and serve a response as provided in section (c), including a reference to the last day for filing a response and the addresses at which such response must be filed and served. The notice shall contain the return address of the petitioner or the petitioner's attorney. The notice and a copy of the petition and order to show cause shall be served by the petitioner on the respondent not less than 14 days prior to the date set for the hearing, by (1) mailing a true copy thereof by first class mail to each respondent at the address or addresses stated in the lien or document and (2) filing a copy with the clerk of the district court and delivering a second copy to the clerk of the district court for posting in the clerk's office, which shall be evidenced by the certificate of the petitioner or petitioner's agent or attorney. Alternatively, the petitioner may serve the petition, notice, and show cause order upon each respondent in accordance with Rule 4, or, in the event the claim is brought as a counterclaim or cross-claim in a pending action in which the parties have appeared, in accordance with Rule 5.

(c) Response; Contents; Filing and Service. Not less than 7 days prior to the date set for the hearing, the respondent shall file and serve a verified response to the petition, setting forth the facts supporting the validity of the lien or document and attaching copies of all documents which support the validity of the lien or document. Service of such response shall be made in accordance with Rule 5(b).

(d) Hearing; Decree; Hearing Dispensed With If No Response Filed. If, following a hearing on the order to show cause, the court determines that the lien or document is a spurious lien or a spurious document, the court shall make findings of fact and enter an order and decree declaring the spurious lien or document and any related notices of lis pendens invalid, releasing the recorded or filed spurious lien or spurious document, and entering a monetary judgment in the amount of the petitioner's costs, including reasonable attorney fees, against the respondent and in favor of the petitioner. If, following the hearing on the order to show cause, the court determines that the lien or document is not a spurious lien or document, the court shall issue an order so finding and enter a monetary judgment against the petitioner and in favor of the respondent in the amount of the respondent's

costs, including reasonable attorney fees. If necessary, the court may in its discretion continue the hearing on the show cause order for further proceedings and trial. If no response is filed and served by the respondent within the time permitted by section (c), the court shall examine the petition and, if satisfied that venue is proper and that the lien or document is spurious, the court shall dispense with the hearing and forthwith enter the order, which shall be a final judgment for purposes of appeal. If the petition has been personally served upon the respondent in accordance with Rule 4(e) or (g), the court shall enter judgment in favor of petitioner and against the respondent for the petitioner's costs, including reasonable attorney fees.

(e) Docket Fee. A docket fee in the amount specified by law shall be paid by the petitioner. The respondent shall pay, at the time of the filing of the response, a docket fee in the amount specified by law for a defendant or respondent in a civil action under section 13-32-101(1)(d), C.R.S.

Source: Entire rule added and adopted December 18, 1997, effective January 1, 1998; (b) and (d) corrected December 30, 1997, effective January 1, 1998; (b) amended and effective June 28, 2007; (a)(1), (b), and (c) amended and adopted December 14, 2011, effective July 1, 2012.

ANNOTATION

Because a lis pendens can be a spurious document, trial court may award attorney fees and costs for a spurious lis pendens. Shyanne Props., LLC v. Torp, 210 P.3d 490 (Colo. App. 2009).

Defendants' petition for removal of a lis pendens as a spurious document constituted a counterclaim, even though it was not denominated as such, because defendants filed the petition in a pending action and not in a separate proceeding. Therefore, defendants were not required to pay a docket fee and properly served their petition under C.R.C.P. 5 using an electronic filing system. Shyanne Props., LLC v. Torp, 210 P.3d 490 (Colo. App. 2009).

Trial court had jurisdiction to award attorney fees and costs to defendants for a spurious lis pendens. Because plaintiff did not refute that the lis pendens was spurious at the show cause hearing, trial court had jurisdiction to enter judgment in favor of defendants and against plaintiff for defendants' costs and attorney fees. Shyanne Props., LLC v. Torp, 210 P.3d 490 (Colo. App. 2009).

Trial court abused its discretion in awarding attorney fees without holding an evidentiary hearing on the reasonableness and necessity of the attorney fees requested by defendants. If a party requests a hearing concerning an award of fees, the trial court must hold a hearing. Shyanne Props., LLC v. Torp, 210 P.3d 490 (Colo. App. 2009).

Rule creates an exception to the priority rule, which requires the second of two actions with the same parties and subject matter to be stayed until the first action is finally determined. Under the express language of the rule, a party challenging the validity of a recorded document may file the petition as a counterclaim or cross-claim, or the party may institute a separate proceeding. Battle N., LLC v. Sensible Hous. Co., 2015 COA 83, 370 P.3d 238.

This rule and § 38-35-204, both governing spurious lien proceedings, conflict with, and thus control over, the more general rules of pleading. Therefore, the trial court did not err when it concluded that banks could not raise their counterclaims and third-party claim in the spurious lien action and dismissed them without prejudice. Fiscus v. Liberty Mort. Corp., 2014 COA 79, 373 P.3d 644, aff'd on other grounds, 2016 CO 31, 379 P.3d 278.

(d) The office of the county clerk and recorder shall index the notice of transfer fee under the names of the persons, entities, or organizations identified in paragraph (b) of this subsection (4) or as such names may be identified in a notice that has been amended under paragraph (c) of this subsection (4). The office of the county clerk and recorder shall not be required to examine any other information contained in the notice of transfer fee or any amendment to such notice.

(5) If the payee fails to comply fully with paragraph (a) or (b) of subsection (4) of this section, the grantor of any residential real property burdened by the transfer fee covenant may proceed with the conveyance to any grantee and in doing so shall be deemed to have acted in good faith and shall not be subject to any obligations under the transfer fee covenant. All conveyances thereafter shall be free and clear of any such transfer fee and transfer fee covenant.

(6) (a) Upon written request made by the owner, or the owner's designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the payee's address shown on the notice of transfer fee or any amendment to the notice, the payee shall furnish to the owner or the owner's designee a written statement specifying the amount of the transfer fee payable. If the payee fails to provide such statement within thirty days after the date a written request for the same is sent to the address shown in the notice of transfer fee in order to obtain a release of such fee, then the owner or the owner's designee, on recording of the affidavit required under subparagraph (I) of paragraph (b) of this subsection (6), may convey any interest in the residential real property to any grantee without payment of the transfer fee and such conveyance shall not be subject to the transfer fee and transfer fee covenant.

(b) (I) An affidavit, executed under penalty of perjury, stating the facts specified under paragraph (a) of this subsection (6) and containing, at a minimum, the information set out in subparagraph (III) of this paragraph (b), and made by one or more persons, if applicable, who has actual knowledge of, and is competent to testify in a court of competent jurisdiction about, the facts in such affidavit, shall be recorded prior to, simultaneously with, or within forty-five days after a deed or other instrument conveying the interest in the residential real property burdened by the transfer fee covenant is recorded in the office of the county clerk and recorder in the county in which the residential real property is situated.

(II) When recorded, an affidavit as described in subparagraph (I) of this paragraph (b) shall constitute prima facie evidence that:

(A) A request for the written statement of the transfer fee payable in order to obtain a release of the fee imposed by the transfer fee covenant was sent to the address shown in the notice of transfer fee or in any amendment to such notice; and

(B) The payee failed to provide the written statement of the transfer fee payable within thirty days of the date of the notice sent to the address shown in the notice of transfer fee or in any amendment to such notice.

(III) An affidavit filed under subparagraph (I) of this paragraph (b) shall state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and shall include the legal description of the residential real property burdened by the transfer fee covenant; the name of the person appearing who is on record as the owner of such residential real property at the time of the signing of such affidavit; the name of the grantee of the conveyance to be recorded; a reference, by recording information, to the instrument of record containing the transfer fee covenant; and an acknowledgment that the affiant is testifying under penalty of perjury.

(IV) The office of the county clerk and recorder shall index the affidavit in the name of the record owner shown therein.

(V) In no event shall the liability of the affiant to any payee for nonpayment of the transfer fee exceed the amount stated in the notice of transfer fee covenant for that particular conveyance; except that nothing in this section shall confer any liability upon any person or title company, or any agent or employee of such company, that executes an affidavit on request of any grantor when the person or title company has actual knowledge of some or all of the matters contained in the affidavit, unless that person or title company is proven to have acted in bad faith or with gross negligence.

(7) Notwithstanding any other provision contained in the transfer fee covenant, any notice given under this section shall be sent to the last-known address of the payee as specified in the notice of transfer fee or in any amendment to the notice.

(8) Notwithstanding any other provision of this section, subsections (4), (5), and (6) of this section shall not apply to a nonprofit organization formed prior to May 23, 2011, that is either described in section 501 (c)(3), 501 (c)(4), or 501 (c)(7) of the federal "Internal Revenue Code of 1986", as amended, or that is organized in accordance with the provisions of article 30 of title 7, C.R.S., article 40 of title 7, C.R.S., or articles 121 to 137 of title 7, C.R.S., and that is a payee under a transfer fee covenant recorded prior to May 23, 2011.

(9) This section shall not be construed to imply that any transfer fee covenant or excluded provision is valid or enforceable solely as the result of the enactment of this section.

Source: L. 2011: Entire section added, (SB 11-234), ch. 198, p. 822, § 1, effective May 23.

PART 2

SPURIOUS LIENS AND DOCUMENTS

38-35-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Federal official or employee" means an appointed or elected official or any employee of the government of the United States of America or of any agency of such government as defined for purposes of the "Federal Tort Claims Act", 28 U.S.C. sec. 2671.

(2) "Lien" means an encumbrance on real or personal property as security for the payment of a debt or performance of an obligation.

(3) "Spurious document" means any document that is forged or groundless, contains a material misstatement or false claim, or is otherwise patently invalid.

(4) "Spurious lien" means a purported lien or claim of lien that:

(a) Is not provided for by a specific Colorado or federal statute or by a specific ordinance or charter of a home rule municipality;

(b) Is not created, suffered, assumed, or agreed to by the owner of the property it purports to encumber; or

(c) Is not imposed by order, judgment, or decree of a state court or a federal court.

(5) "State court" means a court established pursuant to title 13, C.R.S.

(6) "State or local official or employee" means an appointed or elected official or any employee of:

(a) The state of Colorado;

(b) Any agency, board, commission, or state department in any branch of state government;

(c) Any institution of higher education; or

(d) Any school district, political subdivision, county, municipality, intergovernmental agency, or other unit of local government in Colorado.

Source: L. 97: Entire part added, p. 35, § 1, effective March 20. **L. 98:** (4)(a) amended, p. 152, § 1, effective April 2.

ANNOTATION

For purposes of satisfying the definition of "spurious document" under subsection (3), a document is "groundless" for which a proponent can advance no rational argument based on evidence or the law to support the claim of a lien. Westar Holdings P'ship v. Reece, 991 P.2d 328 (Colo. App. 1999).

Notice of lis pendens may be a spurious document, which includes any document that is forged or groundless, contains a material misstatement or false claim, or is otherwise patently invalid. Pierce v. Francis, 194 P.3d 505 (Colo. App. 2008); Shyanne Props., LLC v. Torp, 210 P.3d 490 (Colo. App. 2009).

"Wild deed" is "patently invalid" and thus a spurious document under subsection (3). A deed of trust executed by a grantor with no right, title, or interest in the subject properties the deed

purported to convey is outside the chain of title, a "wild deed", and a spurious document. GMAC Mortgage Corp. v. PWI Group, 155 P.3d 556 (Colo. App. 2006).

Use of notices of lis pendens in will contests appropriate. Pierce v. Francis, 194 P.3d 505 (Colo. App. 2008).

Claims in underlying will contest sufficient to justify a notice of lis pendens. Pierce v. Francis, 194 P.3d 505 (Colo. App. 2008).

Likelihood of success at trial or on appeal not required to rebuff a challenge to a lis pendens notice. Pierce v. Francis, 194 P.3d 505 (Colo. App. 2008).

Because mechanic's liens are provided for by statute, article 22 of title 38, they are excluded from definition of "spurious liens" and cannot be invalidated on that basis. Moreover, mechanic's liens cannot be challenged as "spurious documents". Tuscany, LLC v. W. States Excavating Pipe & Boring, LLC, 128 P.3d 274 (Colo. App. 2005).

Courts of general jurisdiction have the authority to weigh the validity of a mechanic's lien on other grounds and apply the spurious liens and documents' statutes. SR Condos., LLC v. K.C. Constr., Inc., 176 P.3d 866 (Colo. App. 2007).

Notice of lis pendens cannot be a spurious lien because such notice is not a lien. A notice of lis pendens does not encumber property but merely informs third parties that litigation is pending that could affect title to the property. Pierce v. Francis, 194 P.3d 505 (Colo. App. 2008).

A deed of trust must be examined as a spurious lien under subsection (4), not as a spurious document under subsection (3). Deutsche Bank Trust Co. Ams. v. Samora, 2013 COA 81, 321 P.3d 590.

38-35-202. Recording or filing. (1) Any state or local official or employee, including the clerk and recorder of any county or city and county and the Colorado secretary of state, may accept or reject for recording or filing any document that the state or local official or employee reasonably believes in good faith may be a spurious lien or spurious document.

(2) No state or local official or employee, including the clerk and recorder of any county or city and county and the Colorado secretary of state, shall be liable to any person or claimant for either the acceptance or rejection for recording or filing of any document that the state or local official or employee reasonably believes in good faith may be a spurious lien or spurious document.

(3) No state or local official or employee, including the clerk and recorder of any county or city and county and the Colorado secretary of state, shall be obligated to accept for recording or filing any lien or claim of lien against a federal official or employee or a state or local official or employee based upon the performance or nonperformance of that official's or employee's duties unless such lien or claim of lien is accompanied by a specific order issued by a state court or federal court authorizing the recording or filing of such lien or claim of lien.

Source: L. 97: Entire part added, p. 36, § 1, effective March 20.

38-35-203. Action to enforce. (1) No spurious lien or spurious document shall hold or affect any real or personal property longer than thirty-five days after the lien or document has been recorded or filed in the office of any state or local official or employee, including the office of the clerk and recorder of any county or city and county or the office of the Colorado secretary of state, unless within the thirty-five days:

(a) An action has been commenced to enforce such lien or document in the state district court for the county or city and county in which the lien or document was recorded or filed or the federal district court in Colorado; and

(b) A notice of lis pendens stating that such an action has been commenced is recorded or filed in the office where the lien or document was recorded or filed.

(2) The notice of lis pendens required by paragraph (b) of subsection (1) of this section must comply with the requirements of section 38-35-110 and rule 105 (f) of the Colorado rules of civil procedure and must include the civil action number of the action that has been commenced to enforce the lien or document. Failure to comply with the requirements of this subsection (2) shall render the notice of lis pendens invalid.

Source: L. 97: Entire part added, p. 37, § 1, effective March 20. **L. 2012:** IP(1) amended, (SB 12-175), ch. 208, p. 895, § 169, effective July 1.

38-35-204. Order to show cause. (1) Any person whose real or personal property is affected by a recorded or filed lien or document that the person believes is a spurious lien or spurious document may petition the district court in the county or city and county in which the lien or document was recorded or filed or the federal district court in Colorado for an order to show cause why the lien or document should not be declared invalid. The petition shall set forth a concise statement of the facts upon which the petition is based and shall be supported by an affidavit of the petitioner or the petitioner's attorney. The order to show cause may be granted ex parte and shall:

(a) Direct any lien claimant and any person who recorded or filed the lien or document to appear as respondent before the court at a time and place certain not less than fourteen days nor more than twenty-one days after service of the order to show cause why the lien or document should not be declared invalid and why such other relief provided for by this section should not be granted;

(b) State that, if the respondent fails to appear at the time and place specified, the spurious lien or spurious document will be declared invalid and released; and

(c) State that the court shall award costs, including reasonable attorney fees, to the prevailing party.

(2) If, following the hearing on the order to show cause, the court determines that the lien or document is a spurious lien or spurious document, the court shall make findings of fact and enter an order and decree declaring the spurious lien or spurious document and any related notice of lis pendens invalid, releasing the recorded or filed spurious lien or spurious document, and entering a monetary judgment in the amount of the petitioner's costs, including reasonable attorney fees, against any respondent and in favor of the petitioner. A certified copy of such order may be recorded or filed in the office of any state or local official or employee, including the clerk and recorder of any county or city and county and the Colorado secretary of state.

(3) If, following the hearing on the order to show cause, the court determines that the lien or document is not a spurious lien or spurious document, the court shall issue an order so finding and enter a monetary judgment in the amount of any respondent's costs, including reasonable attorney fees, against any petitioner and in favor of the respondent.

Source: L. 97: Entire part added, p. 37, § 1, effective March 20. **L. 2012:** (1)(a) amended, (SB 12-175), ch. 208, p. 895, § 170, effective July 1.

Editor's note: Section 38-22.5-110 states that this section applies to liens asserted pursuant to article 22.5 of this title.

ANNOTATION

For purposes of satisfying the definition of "spurious document" under this section, a document is "groundless" for which a proponent can advance no rational argument based on evidence or the law to support the claim of a lien. Westar Holdings P'ship v. Reece, 991 P.2d 328 (Colo. App. 1999).

Exhibit in civil action cannot be a spurious document. Section only applies to recording or filing that affects a person's real property, and an exhibit is nothing more than evidence relating to the parties' legal positions. Battle N., LLC v. Sensible Hous. Co., 2015 COA 83, 370 P.3d 238.

An invalid quitclaim deed may be a spurious document. Such a document creates a cloud on the title, and thereby may affect a person's real property. Battle N., LLC v. Sensible Hous. Co., 2015 COA 83, 370 P.3d 238.

A hearing held pursuant to subsection (3) includes both the privilege to be present when the case is being considered and the right to present and support one's contentions by evidence and argument, unless the parties agree to a waiver of the right to be present and have evidence considered. Accordingly, the court erred in limiting its review to the pleaded allegations and legal argument. Westar Holdings P'ship v. Reece, 991 P.2d 328 (Colo. App. 1999).

Trial court had jurisdiction to award attorney fees and costs to defendants for a spurious lis pendens. Because plaintiff did not refute that the lis pendens was spurious at the show cause hearing, and because a lis pendens can be a spurious document, trial court had jurisdiction to enter judgment in favor of defendants and against plaintiff for defendants' costs and attor-

ney fees. Shyanne Props., LLC v. Torp, 210 P.3d 490 (Colo. App. 2009).

Trial court abused its discretion in awarding attorney fees without holding an evidentiary hearing on the reasonableness and necessity of the attorney fees requested by defendants. If a party requests a hearing concerning an award of fees, the trial court must hold a hearing. Shyanne Props., LLC v. Torp, 210 P.3d 490 (Colo. App. 2009).

Release of contested liens or documents before the show cause hearing precludes an award of attorney fees under this section. Sifton v. Stewart Title Guar. Co., 259 P.3d 542 (Colo. App. 2011).

This section and C.R.C.P. 105.1, both governing spurious lien proceedings, conflict with, and thus control over, the more general rules of pleading. Therefore, the trial court did not err when it concluded that banks could not raise their counterclaims and third-party claim in the spurious lien action and dismissed them without prejudice. Fiscus v. Liberty Mortgage Corp., 2014 COA 79, 373 P.3d 644, aff'd on other grounds, 2016 CO 31, 379 P.3d 278.

ARTICLE 35.5

Nondisclosure of Information Psychologically Impacting Real Property

38-35.5-101. Circumstances psychologically impacting real property - no duty for broker or salesperson to disclose. (1) Facts or suspicions regarding circumstances occurring on a parcel of property which could psychologically impact or stigmatize such property are not material facts subject to a disclosure requirement in a real estate transaction. Such facts or suspicions include, but are not limited to, the following:

(a) That an occupant of real property is, or was at any time suspected to be, infected or has been infected with human immunodeficiency virus (HIV) or diagnosed with acquired immune deficiency syndrome (AIDS), or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place; or

(b) That the property was the site of a homicide or other felony or of a suicide.

(2) No cause of action shall arise against a real estate broker or salesperson for failing to disclose such circumstance occurring on the property which might psychologically impact or stigmatize such property.

Source: L. 91: Entire article added, p. 1636, § 20, effective July 1.

ARTICLE 35.7

Disclosures Required in Connection with Conveyances of Residential Real Property

38-35.7-101. Disclosure - special taxing districts - general obligation indebtedness. (1) Every contract for the purchase and sale of residential real property shall contain a

disclosure statement in bold-faced type which is clearly legible and in substantially the following form:

SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

(2) The obligation to provide the disclosure set forth in subsection (1) of this section shall be upon the seller, and, in the event of the failure by the seller to provide the written disclosure described in subsection (1) of this section, the purchaser shall have a claim for relief against the seller for all damages to the purchaser resulting from such failure plus court costs.

Source: L. 92: Entire article added, p. 995, § 4, effective July 1. **L. 2009:** (1) amended, (SB 09-087), ch. 325, p. 1735, § 7, effective July 1.

38-35.7-102. Disclosure - common interest community - obligation to pay assessments - requirement for architectural approval. (1) On and after January 1, 2007, every contract for the purchase and sale of residential real property in a common interest community shall contain a disclosure statement in bold-faced type that is clearly legible and in substantially the following form:

THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

(2) (a) The obligation to provide the disclosure set forth in subsection (1) of this section shall be upon the seller, and, in the event of the failure by the seller to provide the

written disclosure described in subsection (1) of this section, the purchaser shall have a claim for relief against the seller for actual damages directly and proximately caused by such failure plus court costs. It shall be an affirmative defense to any claim for damages brought under this section that the purchaser had actual or constructive knowledge of the facts and information required to be disclosed.

(b) Upon request, the seller shall either provide to the buyer or authorize the unit owners' association to provide to the buyer, upon payment of the association's usual fee pursuant to section 38-33.3-317 (4), all of the common interest community's governing documents and financial documents, as listed in the most recent available version of the contract to buy and sell real estate promulgated by the real estate commission as of the date of the contract.

(3) This section shall not apply to the sale of a unit that is a time share unit, as defined in section 38-33-110 (7).

Source: L. 2005: Entire section added, p. 1389, § 19, effective January 1, 2006. **L. 2006:** Entire section R&RE, p. 1225, § 15, effective May 26. **L. 2012:** (2)(b) amended. (HB 12-1237), ch. 232, p. 1019, § 2, effective January 1, 2013.

38-35.7-103. Disclosure - methamphetamine laboratory. (1) A buyer of residential real property has the right to test the property for the purpose of determining whether the property has ever been used as a methamphetamine laboratory.

(2) (a) Tests conducted pursuant to this section shall be performed by a certified industrial hygienist or industrial hygienist, as those terms are defined in section 24-30-1402, C.R.S., and in accordance with the procedures and standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, C.R.S. If the buyer's test results indicate that the property has been contaminated with methamphetamine or other contaminants for which standards have been established pursuant to section 25-18.5-102, C.R.S., and has not been remediated to meet the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, C.R.S., the buyer shall promptly give written notice to the seller of the results of the test, and the buyer may terminate the contract. The contract shall not limit the rights to test the property or to cancel the contract based upon the result of the tests.

(b) The seller shall have thirty days after receipt of the notice to conduct a second independent test. If the seller's test results indicate that the property has been used as a methamphetamine laboratory but has not been remediated to meet the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, C.R.S., then the second independent hygienist shall so notify the seller.

(c) If the seller receives a notice under this subsection (2) and does not elect to have the property retested under this subsection (2), then an illegal drug laboratory used to manufacture methamphetamine has been discovered. Nothing in this section prohibits a buyer from purchasing the property and assuming liability under section 25-18.5-103, C.R.S., if, on the date of closing, the buyer provides notice to the department of public health and environment and governing body of the purchase and assumption of liability and if the remediation required by section 25-18.5-103, C.R.S., is completed within ninety days after the date of closing.

(3) (a) Except as specified in subsection (4) of this section, the seller shall disclose in writing to the buyer whether the seller knows that the property was previously used as a methamphetamine laboratory.

(b) A seller who fails to make a disclosure required by this section at or before the time of sale and who knew of methamphetamine production on the property is liable to the buyer for:

(I) Costs relating to remediation of the property according to the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, C.R.S.;

(II) Costs relating to health-related injuries occurring after the sale to residents of the property caused by methamphetamine production on the property; and

(III) Reasonable attorney fees for collection of costs from the seller.