Memorandum — Is Gleneagle Civic Association "Under" CCIOA?

Re: Whether and to what extent the Gleneagle Civic Association ("GCA") is subject to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 *et seq.* ("CCIOA"), considering (a) the **1995 Articles of Incorporation**, (b) **Clause F of the 2017 Annexation (Amendment Four)**, and (c) the **§ 118 election procedure** for bringing a pre-1992 community fully under CCIOA **Date of analysis:** June 28, 2026 **Prepared by:** (internal working draft)

> **Not legal advice.** This memo analyzes recorded and filed documents to frame a legal question that is genuinely unsettled. The conclusion (Part 9) should be confirmed with association counsel before GCA relies on any particular CCIOA status.

---

1. Question presented

Is GCA "under" CCIOA — and if so, is it subject to **all** of CCIOA, to the **preexisting-community subset enumerated in § 38-33.3-117**, or only to the **limited-expense subset (§§ 105–107)**?

The tension is built into GCA's own documents:

- The **1995 Articles of Incorporation** declare GCA's first purpose is "to be a **unit owners' association as defined in the Colorado Common Interest Ownership Act**," and invoke CCIOA throughout.
- The **2017 Amendment Four (Clause F)** repeats that GCA has "the **powers and duties set forth in** the Colorado Common Interest Ownership Act."
- But the **2025 Amended & Restated Declaration (§ 5.7)** now claims GCA is a **limited-expense planned community** exempt from CCIOA "except for Sections 38-33.3-105 to 38-33.3-107."

This memo resolves how these fit together, and addresses the specific mechanism by which a pre-1992 community can elect to be fully governed by CCIOA — and whether GCA ever used it.

---

2. Short answer

GCA is a *preexisting* common interest community that has never made the statutory election to be fully subject to CCIOA. So it is *not* governed by the entire Act — regardless of the broad "unit owners' association under CCIOA" language in its Articles and in Amendment Four.

1. **GCA's community is preexisting (pre-1992).** Although the *corporation* was incorporated January 20, 1995, the *common interest community* was created by declarations recorded in **1973/1983** (and amendments through 1986) — all before July 1, 1992. CCIOA applicability turns on when the **community** was created, not when the managing nonprofit was formed. GCA's baseline is therefore **§ 38-33.3-117** (the preexisting-community list), or the **§ 119** limited-expense exception — **never § 115 (full CCIOA for new communities).**
2. **The only way a pre-1992 community becomes subject to *all* of CCIOA is a recorded § 118 election.** Reciting "unit owners' association under CCIOA" in the Articles or the Declaration does **not** accomplish this. Section 118 requires a 67% owner vote and a **statement of election recorded with the county clerk and recorder**, effective only "upon the recording."
3. **El Paso County has no record of a § 118 election by GCA.** Accordingly, GCA **never brought itself fully under CCIOA.** The CCIOA language in the 1995 Articles and the 2017 Amendment Four is descriptive/aspirational — strong evidence of how GCA held itself out, but **not** the self-executing statutory election.
4. **The realistic range is therefore narrow — and bounded *below* the full Act:**
   - **Minimum:** §§ 105–107 (including the mandatory public-policy sections 106.5/106.7/106.8), if the 2025 limited-expense exemption (§ 119 via the $200 cap) is valid.
   - **Maximum:** the **§ 117 enumerated list** (e.g., §§ 209.5, 308, 315, 316, 317, etc.), if it is not.

- **Not** the entire CCIOA, in either case, because no § 118 election was recorded.

5. **The 2025 exemption claim remains aggressive.** It conflicts with GCA's own Articles and Amendment Four, both of which describe a CCIOA unit owners' association, and it depends on contestable § 119/§ 120 mechanics.

---

3. The CCIOA applicability framework — where GCA sits

Provision	Who it governs	Relevance to GCA
§ 115	New communities (on/after 7-1-1992) — full CCIOA	**N/A** — community created 1973/1983
§ 116	New small (≤20 units) or limited-expense communities — §§ 105–107 only	**N/A by its terms** — applies to post-7-1-1992 communities
§ 117	**Preexisting** communities (pre-7-1-1992) — an enumerated list of sections	**GCA's baseline**
§ 118	**Election** by a preexisting community to be treated as fully subject to CCIOA	**Available but not used — no recorded election (see Part 7)**
§ 119	**Exception** for *small* (≤10 units) or *limited-expense* preexisting communities — §§ 105–107 only	**The 2025 Declaration's theory**
§ 120	Procedure for amending preexisting governing instruments	Central to the § 119 question

Three structural facts drive everything:

1. **The 1995 incorporation does not reset the clock.** A common interest community is "created" when a declaration subjecting property to covenants is recorded (§ 103(8)). Gleneagle's declarations were recorded 1973, 1983, 1984, 1985, and 1986 — all pre-1992. Forming the nonprofit *Association* in 1995 created the managing entity, not a new (post-1992) community. The 1995 Articles themselves list only those pre-1992 declarations as "the Declarations." **GCA is unambiguously a preexisting community.**

2. **GCA is far too large for any "small community" route.** The 2017 Amendment Four recites **649 lots**. The ≤20-unit (§ 116) and ≤10-unit (§ 119) routes are unavailable. GCA's *only* path to §§ 105–107-only treatment is the **limited-expense (dollar-cap)** path.

3. **The dollar cap is a 2025 innovation.** No governing document before the 2025 Declaration — not the 1983 Restated Declaration, not the 2017 Amendment Four, not the 1995 Articles — contained a common-expense cap. The $200 cap first appears in **2025 Declaration § 5.7**. Before October 2025, GCA did not qualify for the § 119 limited-expense exemption; its baseline was the § 117 list.

---

4. The 2025 Declaration's exemption theory

The 2025 Declaration, § 5.7, caps annual average common-expense liability at **$200** "so as to always remain exempt from the Colorado Common Interest Ownership Act except for Sections 38-33.3-105 to 38-33.3-107." Definitions § 2.1(a) limits "the Act" to its application "to limited expense communities," and §§ 5.9, 9.9, 10.1(e), and Article 11 repeat the hedge.

If effective, this drops GCA from the § 117 list to §§ 105–107 only. The theory is plausible on the statute's face (§ 119 keys the exemption to what "its declaration limits"), but it must overcome (a) the § 119/§ 120 "unless amended" clause, and (b) GCA's own contrary representations in the Articles and Amendment Four.

---

5. The 1995 Articles of Incorporation — what they say

GCA's Articles of Incorporation, signed and acknowledged **effective January 20, 1995** (incorporator Ray Berg), repeatedly and deliberately frame GCA as a CCIOA association:

- **Article III(1):** "To be a **unit owners' association as defined in the Colorado Common Interest Ownership Act, § 38-33.3-101, et seq., C.R.S.** affecting the real property located in the Subdivision … and to provide a means of **self-government** for the owners …"
- **Article III(2)–(7):** powers to manage, adopt rules, levy assessments, and enforce covenants "as provided in the Declarations **or the Colorado Common Interest Ownership Act**," and to act "on behalf of the **unit owners (as defined in the Colorado Common Interest Ownership Act**)."
- **Article IV:** powers exercised "in furtherance of the purposes … set forth in the Declarations **or the Colorado Common Interest Ownership Act**."
- **Article V:** dissolution distributes assets "to the **unit owners** according to their pro rata interest."
- **Article VII(1):** membership "as provided in the Declarations, the bylaws … **and the Colorado Common Interest Ownership Act**."
- **Article IX:** bylaws must not be "inconsistent with … the Declarations, these Articles … **or the Colorado Common Interest Ownership Act**."

What this establishes — and what it does not:

- **It establishes** that from 1995 onward GCA *held itself out as, and intended to operate as, a CCIOA unit owners' association.* This is the original source of the 2017 Clause F language, and it is strong evidence cutting against the aggressive §§ 105–107-only exemption now claimed.
- **It does *not* establish full CCIOA coverage.** The Articles (i) reference only pre-1992 declarations, confirming preexisting status; (ii) contain **no limited-expense / dollar-cap language**; and critically (iii) are **not** a § 118 statement of election, and were filed with the **Secretary of State**, not recorded with the **county clerk and recorder** as § 118(3) requires. Aspirational CCIOA recitals in articles of incorporation are not the statutory election (see Part 7).

Note also the contrast in the 2025 Bylaws. The Bylaws revised March 18, 2025 drop the "unit owners' association as defined in CCIOA" framing, describing GCA merely as "a non-profit corporation organized to join the collective resources of property owners … [and] administrator of the covenants." The 2025 governance package thus *quietly reverses* the CCIOA posture that the Articles and Amendment Four had established — without amending the Articles, which still control on conflict (Bylaws Art. … / Declaration § 12.9).

---

6. Clause F (and G) of the 2017 Amendment Four

The recorded **Amendment Four** (executed Feb. 27, 2017; certified by President Kevin Deardorff) carries the Articles' CCIOA framing into the chain of title:

> **Clause F:** GCA "is a Colorado nonprofit corporation … **formed under the provisions of the Colorado Common Interest Ownership Act to be the unit owners' association for the Subdivision** … **having the powers and duties set forth in the Colorado Common Interest Ownership Act** …"
>
> **Clause G:** "… **the Colorado Common Interest Ownership Act, as applied to the Subdivision, supersedes any contrary provision of the Restated Declaration with respect to amendments** … and permits the Restated Declaration … to be further amended only by … **more than sixty-seven percent** of the votes … there exists 649 lots … amendment … requires … at least 433 lots."
>
> **¶ 1:** annexed common property is "**common elements of the Association (as the term 'common element' is defined and used in the Colorado Common Interest Ownership Act**)."

Significance: Amendment Four is a recorded, certified representation that GCA operates as a CCIOA unit owners' association and that **CCIOA's amendment provision (the § 217 67% standard) governs and supersedes the Declaration.** A community subject only to §§ 105–107 would not be governed by § 217 at all — so the very mechanism GCA used to adopt Amendment Four presupposes broader CCIOA coverage (the § 117 list). This squarely contradicts the 2025 §§ 105–107-only claim and the 2025 drop to a 51% amendment threshold (Article 11).

Caveat on precision: Clause F's "formed under … CCIOA" cannot be literally true — GCA's community dates to 1973, and even the corporation (1995) was "formed under" the **Nonprofit Corporation Act**, as the Articles' own preamble states. Clause F is best read as a statement of operating status, not formation authority. But it still documents GCA's consistent recorded position that CCIOA governs it.

---

7. Can a pre-1992 HOA bring itself fully under CCIOA? — § 118, and GCA's missing election

This is the crux of the "is GCA under CCIOA?" question, because it is the **only** route by which a preexisting community becomes subject to *all* of CCIOA.

The rule — § 38-33.3-118 ("Procedure to elect treatment under CCIOA"):

> "(1) Any organization created prior to July 1, 1992, **may elect** to have the common interest community be **treated as if it were created after June 30, 1992**, and thereby subject the common interest community to **all of the provisions** contained in this article, in the following manner …"

The procedure has three mandatory steps:

1. **A 67% vote.** The board adopts a resolution recommending the election and submits it to the members; adoption requires "**at least sixty-seven percent of the votes**" cast (or, if no members may vote, a board-majority vote). Notice must include a copy of the CCIOA article (§ 118(1)(a)).
2. **A written statement of election.** Executed and acknowledged by the **president or vice-president and the secretary**, reciting the entity name, that the election was made, the meeting/quorum/vote facts, and the officers/directors (§ 118(2)).
3. **Recording with the county clerk and recorder.** "The original statement of election … **shall be duly recorded in the office of the clerk and recorder for the county** in which the common interest community is located" (§ 118(3)).

The election is effective *only upon recording*:

> "(4) **Upon the recording** of the original statement of election … said common interest community **shall be subject to all provisions of this article** … as though it had been created after June 30, 1992."

Two points follow directly:

- **Articles/Declaration recitals are not a § 118 election.** Section 118 is a specific, formal mechanism. Describing GCA as a "unit owners' association under CCIOA" in the 1995 Articles (filed with the Secretary of State) or in the 2017 Amendment Four does **not** satisfy § 118's requirements of a dedicated statement of election, the 67% election vote *on that question*, and **recording with the county clerk and recorder.** The election is a deliberate, recorded act — not an incidental recital.
- **Recording in El Paso County is the operative trigger.** GCA's community is in El Paso County, so a valid § 118 election would appear in the **El Paso County Clerk and Recorder's** real-property records.

The dispositive fact: El Paso County has no record of a § 118 election by GCA.

A search of the El Paso County Clerk and Recorder's records discloses **no recorded statement of election** under § 38-33.3-118. Because the election is effective "upon the recording" and no such recording exists, **GCA never elected treatment as a post-1992 community, and is not subject to the entire CCIOA.** Its coverage is capped at the **§ 117 enumerated list** (and possibly narrowed to §§ 105–107 if the limited-expense exemption holds).

(Practice note: if GCA wished to confirm this definitively, it would request a recorded-document search for GCA / "Gleneagle" instruments referencing § 38-33.3-118 or "statement of election" in the El Paso County records. The absence reported here should be papered with that search result.)

---

8. The § 119 / § 120 problem (how much of § 117 applies)

Even confined to the § 117 list, a further question is whether the 2025 limited-expense cap narrows GCA to §§ 105–107. Section 119 makes a qualifying limited-expense preexisting community subject only to §§ 105–107 —

> "**unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of section 38-33.3-120, in which case all the sections enumerated in section 38-33.3-117 apply.**"

- **Reading A:** a routine amendment adding a cap does not forfeit the exemption, so the 2025 Declaration makes GCA limited-expense (§§ 105–107 only).
- **Reading B:** adopting an amended-and-restated declaration *is* amending "to take advantage of § 120," so "all the sections enumerated in § 117 apply," pulling the full § 117 list back in.

Either way, the ceiling is the **§ 117 list**, never the entire Act (that would require the § 118 election GCA never recorded). Layered on top, **§ 120(2)** requires amendments to conform to the procedure in the original instrument — **67%** (1983 § 309; 2025 Recital H; 2017 Clause G) — which sits uneasily with Article 11's prospective **51%** threshold.

---

9. Conclusion — a layered answer

Is GCA "under" CCIOA? Yes — but in a bounded way, and *not* under the entire Act.

1. **GCA is a preexisting community** (created 1973/1983); the 1995 incorporation did not make it a new/full-CCIOA community.
2. **GCA never made a § 118 election** — El Paso County has no recorded statement of election — so it is **not subject to all of CCIOA**, notwithstanding the "unit owners' association under CCIOA" language in its 1995 Articles and 2017 Amendment Four. That language is evidence of intent and holding-out, not a self-executing election.
3. **Floor (not seriously disputable):** GCA is subject to **§§ 105–107**, including mandatory **§§ 106.5/106.7/106.8** (see the companion conflict memo for the resulting covenant conflicts).
4. **Ceiling (well-supported):** GCA may be subject to the **full § 117 enumerated list**, because (a) until October 2025 it had no cap and its baseline was § 117; (b) its Articles and Amendment Four repeatedly invoke CCIOA and applied the § 217 amendment standard; and (c) Reading B of § 119 treats the 2025 restatement as triggering the § 117 list.
5. **The 2025 limited-expense exemption is therefore aggressive and not secure.** It depends on a valid cap, the narrow Reading A of § 119, and a court disregarding GCA's own Articles, Amendment Four, and historical 67% amendment practice.

Bottom line for the Board: Treat §§ 105–107 (incl. 106.5/106.7/106.8) as binding today. Do **not** assume either extreme — GCA is neither fully under CCIOA (no § 118 election) nor safely limited to §§ 105–107 (the § 119/§ 120 question and GCA's own CCIOA recitals cut the other way). The honest status is "**preexisting community, § 117 list presumptively applicable, with a contested limited-expense narrowing.**"

---

10. Recommendations

1. **Paper the El Paso County no-election finding** with a formal recorded-document search (GCA / "Gleneagle" instruments referencing § 38-33.3-118 or "statement of election"), and retain it.
2. **Get a counsel opinion** on (a) the § 119/§ 120 question (Reading A vs. B) and (b) whether the 1995 Articles and 2017 Amendment Four estop GCA from claiming the broad §§ 105–107-only exemption.

3. **Reconcile the documents to a single, deliberate posture:**
   - **Option A — Genuine limited-expense:** keep the §§ 105–107-only theory, but then *amend the Articles* (still controlling on conflict) to remove the "unit owners' association under CCIOA / powers and duties under CCIOA" language, and remove the borrowed full-CCIOA machinery from the Declaration (§ 5.3 super-lien priority; § 5.6(d) HB 22-1137 limits). As written, the Articles contradict the exemption.
   - **Option B — Full CCIOA:** make and **record a § 118 election** in El Paso County (67% vote + recorded statement). This matches the Articles and Amendment Four, validates the borrowed provisions, and ends the ambiguity — at the cost of full CCIOA obligations.
4. **Reconcile the amendment threshold** (67% per the Articles/2017/CCIOA vs. 51% per Article 11); a prospective 51% threshold likely cannot stand if § 217 applies.

Appendix — Key source citations

- **1995 Articles of Incorporation** (effective Jan. 20, 1995; incorporator Ray Berg): Art. III(1) ("unit owners' association as defined in CCIOA"); Art. III(2)–(7), IV, V, VII(1), IX (pervasive CCIOA references); preamble (incorporated under the **Colorado Nonprofit Corporation Act**); references only pre-1992 Declarations; **no limited-expense or § 118 election language**.
- **2025 Declaration:** § 2.1(a); § 5.7 ($200 cap; exemption except §§ 105–107); Recital H (1983 § 309 = 67%); Recital K (2025 approved at 67%); Article 11 (51% prospective); §§ 5.3, 5.6(d) (borrowed § 316/HB 22-1137 machinery).
- **2025 Bylaws (rev. Mar. 18, 2025):** Art. I (purpose statement omitting CCIOA "unit owners' association" framing); conflict clause (Articles control over Bylaws).
- **2017 Amendment Four (Annexation):** Clause F (unit owners' association; CCIOA powers/duties); Clause G (CCIOA supersedes amendment provision; 67%; 649 lots / 433 required); ¶ 1 ("common elements" per CCIOA).
- **CCIOA:** § 103(8) (creation of a community); § 116 (new small/limited-expense; $400 cap/CPI); § 117 (preexisting applicability list); **§ 118 (election to be fully subject — 67% vote, statement of election, recording with county clerk and recorder, effective upon recording)**; § 119 (small/limited-expense preexisting exception; "unless amended … § 120"); § 120 (amendments to preexisting instruments); § 217 (amendment of declaration); §§ 105–107, 106.5, 106.7, 106.8 (mandatory sections).
- **Fact relied upon:** El Paso County Clerk and Recorder records contain **no recorded § 38-33.3-118 statement of election** for GCA.