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SUPREME COURT, STATE OF COLORADO
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Opinion by the Court of Appeals
Case No. 2011CA2141, Judge Fox

Appeal from Arapahoe County District Court
Case No. 2011CV664, The Hon. Gerald J. Rafferty

SARA L. BURNETT,

Petitioner,

v.

STATE OF COLORADO/DEPARTMENT OF NATURAL RESOURCES/DIVISION OF PARKS & OUTDOOR RECREATION,

Respondent.

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Case No: 2013SC306

BRIEF OF AMICUS CURIAE THE COLORADO TRIAL LAWYERS ASSOCIATION

Amicus Curiae Colorado Trial Lawyers Association ("CTLA") respectfully submits this Brief in support of the Plaintiff, Sara L. Burnett ("Burnett") in the above captioned case:

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

☑It contains 4944 words. (not to exceed 9,500 words)

☑It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

For the party raising the issue:

☑It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. , p.), not to an entire document, where the issue was raised and ruled on.

☑I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s/ John F. Poor
John F. Poor

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I. STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the court of appeals erred in concluding that the government did not waive immunity under section 24-10-106(1)(e), C.R.S. (2013), of the Colorado Government Immunity Act, for injuries caused by a tree limb that fell on a camper in an improved campsite in a state park.

II. STATEMENT OF INTEREST

The Colorado Trial Lawyers Association ("CTLA") consists of approximately 1,100 Colorado trial attorneys who represent claimants, particularly individuals, in a wide variety of litigation. The stated mission of CTLA is to protect the rights of the individual, advance trial advocacy skills and promote high ethical standards and professionalism in the ongoing effort to preserve and improve the American system of jurisprudence. The organization is active in promoting fairness and equity in legislation, including the provisions of the Colorado Governmental Immunity Act ("CGIA" or "GIA") that are at issue in this case.

Three other cases currently pending before this Court call upon this Court to determine the scope of the waiver of immunity contained in § 24-10-106(1)(e), C.R.S., which waives governmental immunity for injuries arising from "[a] dangerous condition of any . . . public facility located in any park or recreation area maintained by a public entity . . . ." CTLA writes on behalf of its constituents to

advocate for a single, comprehensive construction of the parks and recreation waiver contained in this particular subsection of the CGIA. The varied facts in *Daniel v. City of Colo. Springs*,[1] *Loveland v. St. Vrain Valley Sch. Dist. Re-1j*,[2] and *Young v. Brighton Sch. Dist. 27J*,[3] the hypothetical circumstances posed in the oral arguments in each of those cases, and the facts of the case at bar provide this Court with a prime opportunity to set forth a construction of subsection (1)(e) that effectuates the intent of the General Assembly to afford injured parties a fair opportunity to recover for injuries sustained as a result of governmental negligence. CTLA's interest reaches beyond the tetralogy of cases currently pending before this Court because both citizens and governmental entities will benefit from the adoption of a consistent framework that will enable litigants to measure and resolve their disputes.

Because this Court is keenly aware of the facts in the tetralogy, this Brief focuses on the intersection between the immunity waiver contained in § 24-10-106(1)(e), C.R.S., and the exception to the waiver for natural conditions of unimproved property, which is also contained in that same subsection. The CTLA

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[1] 2012 COA 171, *cert. granted* 2013 Colo. LEXIS 308 (Colo. Apr. 29, 2013).
[2] 2012 COA 112, *cert. granted sub nom*, 2013 Colo. LEXIS 154 (Colo. Feb. 25, 2013)
[3] 2012 Colo. App. LEXIS 944 (unpublished), *cert. granted* 2013 Colo. LEXIS 160 (Colo. Feb. 25, 2013)

encourages this Court to utilize the currently pending cases to adopt a framework that includes a functional, flexible definition of the terms "public facility" and "park or recreation area," and that gives effect to this Court's repeated direction that waivers of immunity under the CGIA are to be construed broadly in the interest of compensating the victims of governmental negligence.

III. STATEMENT OF THE CASE

The CTLA incorporates by reference the Statement of the Case and factual recitations contained in the Opening Brief filed by Burnett. In addition, the CTLA wishes to draw this Court's attention to the following pertinent facts.

Burnett suffered a fractured skull, fractured vertebra, a concussion and multiple lacerations when the tent in which she was sleeping was struck by an overhanging branch that broke off of a cottonwood tree situated immediately adjacent to Burnett's campsite. The accident happened while Burnett and a friend were camping overnight on Campsite No. 14 in Cherry Creek State Park. The campsite was a "full hook up campsite" featuring a concrete parking pad, a level dirt pad, a picnic table, a fire pit, and electrical, water, and sewer connections. The site was surrounded by a series of 30-40 foot cottonwood trees that contained numerous dead branches. At some point during the night, despite the absence of any wind or other adverse weather conditions, a branch broke off of one of the

cottonwood trees and landed on Burnett's tent. Based on the lack of wind, it is apparent that the tree branch in question overhung the campsite before it fell.

Burnett filed suit against the State of Colorado Department of Natural Resources, Division of Parks & Outdoor Recreation (the "Parks Division") under the Colorado Premises Liability Act, § 13-21-115, C.R.S. The Parks Division filed a Motion to Dismiss and Request for Attorney Fees, claiming immunity under the Colorado Governmental Immunity Act ("CGIA"), § 24-10-101 *et seq.*, C.R.S. The Parks Division contended that the tree that injured Burnett was a "natural condition of . . . unimproved property," for which immunity is retained under the CGIA, rather than a "dangerous condition of [a] public facility located in [a] park or recreation area maintained by a public entity," for which immunity is waived. The trial court granted the Motion, and a divided panel of the court of appeals affirmed. Both the trial court and the court of appeals relied heavily on *Rosales v. City & Cnty. of Denver*, 89 P.3d 507, 510 (Colo. App. 2004), in which the court of appeals held that a pre-existing natural feature may be considered part of a public facility for the purposes of applying the immunity waiver only where the public entity "incorporates [the natural feature] into [the] facility in such a manner that it becomes an integral part of the facility and is essential for the intended use of the facility . . . ."

IV. SUMMARY OF THE ARGUMENT

The CGIA was enacted in derogation of the common law, and this Court has repeatedly instructed lower courts to construe its grants of immunity narrowly in favor of compensating victims of governmental negligence. The CGIA waives immunity for a dangerous condition of any public facility located in any park or recreation area maintained by a public entity, but retains immunity for natural conditions of any unimproved property, even if such conditions are located in a park or recreation area. This Court should interpret the interplay between the terms "dangerous condition" and "public facility" in a functional manner that is broad enough to include within the scope of the immunity waiver dangerous conditions involving pre-existing natural features that originate upon, or overhang, a public facility in a publicly maintained park or recreation area. The *Rosales* framework is not derived from the statutory text and forces trial courts to make a potentially limitless number of arbitrary factual determinations. This Court should disapprove the *Rosales* framework in this case.

V. ARGUMENT

A. THE CGIA WAS ENACTED IN DEROGATION OF THE COMMON LAW, AND THIS COURT HAS REPEATEDLY HELD THAT ITS GRANTS OF IMMUNITY SHOULD BE CONSTRUED NARROWLY.

Prior to 1971, Colorado courts recognized the doctrine of governmental immunity in tort-based actions. *See City of Colo. Springs v. Powell*, 48 P.3d 561, 563 (Colo. 2002). In *Evans v. Bd. of Cnty. Comm'rs*, 482 P.2d 968 (Colo. 1971), *superseded by statute*, Ch. 323, Sec. 1, §§ 130-11-1 to -17, 1971 Colo. Sess. Laws 1204, 1 204-11, this Court abrogated the doctrine of governmental immunity, holding that the state and its subdivisions were subject to suit.[4] This Court did so in part because "the waivers to immunity and the exceptions to those waivers had become exceedingly complicated and in many ways arbitrary. *Powell*, 48 P.3d at 563. This Court wrote:

> The effect of this opinion and its two contemporaries is simply to undo what this court has done and leave the situation where it should have been at the beginning, or at least should be now: in the hands of the General Assembly of the State of Colorado. If the General Assembly wishes to restore sovereign immunity and governmental immunity in whole or in part, it has the authority to do so.

Evans, 482 P.2d at 972.

[4] The Court also issued opinions in two companion cases, *Flournoy v. Sch. Dist. No. 1 of Denver*, 482 P.2d 966 (Colo. 1971) and *Proffitt v. State*, 482 P.2d 965 (Colo. 1971), both of which referenced the reasoning in the *Evans* opinion as the basis for their holdings. Subsequent opinions have referred to this group of cases as the "*Evans* trilogy." *See, e.g.*, *Bertrand v. Bd. of Cnty Comm'rs*, 872 P.2d 223, 227 (Colo. 1994), *superseded by statute on other grounds*, § 24-10-103.7(2.7), C.R.S., *as recognized in Herrera v. City & Cnty. of Denver*, 221 P.3d 423 (Colo. App. 2009).

In response, the General Assembly enacted the CGIA, which re-established the doctrines of sovereign and governmental immunity, but permitted injured parties to bring claims against governmental entities under certain enumerated circumstances. *See Powell*, 48 P.3d at 563 (citing § 24-10-106, C.R.S.). Since that time, this Court has repeatedly held that because the CGIA was enacted in derogation of the common law, the CGIA's grant of immunity should be construed narrowly. *Id.*; *Medina v. State*, 35 P.3d 443, 453 (Colo. 2001); *Bertrand v. Bd. of Cnty. Comm'rs*, 872 P.2d 223, 227 (Colo. 1994) ("[T]he immunity created by the GIA is in derogation of the common law established in the *Evans* trilogy and must be strictly construed."), *superseded by statute on other grounds,* § 24-10-103(2.7), C.R.S., as *recognized by Herrera v. City & Cnty. of Denver*, 221 P.3d 423 (Colo. App. 2009); *State of Colorado v. Moldovan*, 842 P.2d 220, 222 (Colo. 1992) ("Strict construction of the scope of legislatively created immunity is consistent with one of the basic but often overlooked purposes of the Governmental Immunity Act – that is, to permit a person to seek redress for personal injuries caused by a public entity.").[5]

[5] In *City & Cnty. of Denver v. Gallegos*, 916 P.2d 509, 510-11 (Colo. 1996), this Court suggested the opposite, writing that "the GIA requires that exceptions to governmental immunity be interpreted narrowly in order to avoid imposing liability not specifically provided for in the statute." Subsequent decisions of this Court have made clear, however, that the CGIA's grant of immunity should be

Likewise, the provisions of the CGIA permitting suit against governmental entities should be construed broadly, in favor of allowing the injured party an opportunity to recover from the governmental tortfeasor. *See, e.g.*, *Walton v. State*, 968 P.2d 636, 643 (Colo. 1998) ("Because governmental immunity derogates Colorado's common law, the CGIA's waiver provisions are entitled to deferential construction in favor of victims injured by the negligence of governmental agents, while the immunity provisions are subject to strict construction.").

B. THIS COURT SHOULD ADOPT A FUNCTIONAL DEFINITION OF THE TERM "PUBLIC FACILITY" THAT IS BROAD ENOUGH TO INCLUDE THE DANGEROUS CONDITION THAT INJURED BURNETT.

1. The CGIA waives immunity for a dangerous condition of any public facility located in any park or recreation area maintained by a public entity, but retains immunity for natural conditions of any unimproved property, even if located in a park or recreation area.

Under § 24-10-106(1)(e), C.R.S., sovereign immunity is waived by a public entity in an action for injuries resulting from "[a] dangerous condition of any . . . public facility located in any park or recreation area maintained by a public entity . . . ." The next sentence of that provision states, in pertinent part, that "[n]othing in

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interpreted narrowly, and that the exceptions to immunity should be construed broadly. *See, e.g.*, *Corsentino v. Cordova*, 4 P.3d 1082, 1086 (Colo. 2000) ("Without disturbing the interpretation of the term 'public facility' that we proffered in *Gallegos*, we disapprove of the case's language that immunity waivers are to be construed narrowly.")

this paragraph (e) . . . shall be construed to prevent a public entity from asserting sovereign immunity for an injury caused by the natural condition of any unimproved property, whether or not such property is located in a park or recreation area . . . ." This case calls upon this Court to demarcate the boundary between these two categories of conditions.

The CGIA defines a "dangerous condition" as

> either ***a physical condition of a facility or the use thereof*** that constitutes an unreasonable risk to the health or safety of the public, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition is proximately caused by the negligent act or omission of the public entity or public employee in constructing or maintaining such facility.

§ 24–10–103(1.3), C.R.S. (emphasis added).

In this particular case, the Parks Division has not argued that the condition of the tree did not constitute an unreasonable risk to the health or safety of those using the campsite. Nor has the Parks Division argued that it did not know or should not have known of the danger, or that the dangerous condition was not proximately caused by the Parks Division's negligent acts or omissions in maintaining the campsite facility. *See Burnett v. State*, 2013 COA 42, ¶ 33. The Parks Division likewise has not disputed that the full hook up campsite was a "public facility in [a] park or recreation area maintained by a public entity." Accordingly, the only issue that this Court must address here is whether the falling

tree branch that that caused Burnett's injury was a "dangerous condition ***of*** [the] public facility"[6] (the campsite), or whether it was a "natural condition of . . . unimproved property." *See* § 24-10-106(1)(e), C.R.S. (emphasis added). This case calls for the adoption of a framework that will enable courts to delineate the boundary between these two categories of conditions in a consistent, non-arbitrary manner.

2. This Court should interpret the interplay between the terms "dangerous condition" and "public facility" in a functional manner that is broad enough to include in the immunity waiver dangerous conditions involving pre-existing natural features that originate upon, or overhang, a public facility.

The term "public facility" is not defined in the CGIA. However, this court and the court of appeals have defined the term broadly. In *Gallegos*, this Court cited with approval the definition now contained in § 37-60-126(1)(f), C.R.S., which defines a "public facility" as "any facility operated by an instrument of government for the benefit of the public including, but not limited to, a governmental building, park or other recreational facility, school, college, university, or other educational institution, highway, hospital, or stadium." *See Gallegos*, 916 P.2d at 511. This Court went on to note that "the determinative

[6] As noted above, the issue of whether the falling tree branch constituted a "dangerous condition" under the CGIA is not at issue in this case. The ***only*** issue is whether the condition is "of" the public facility – the campsite.

factor in defining a public facility is whether the facility is operated 'for the benefit of the public.'" *Id.* Likewise, the court of appeals in *Loveland v. St. Vrain Valley Sch. Dist. Re-1j*, 2012 COA 112, *cert. granted St. Vrain Valley Sch. Dist. Re-1j v. Loveland*, 2013 Colo. LEXIS 154 (Colo., Feb. 25, 2013), cited with approval the *Rosales* definition of "facility" as "something (as a hospital, machinery, plumbing) that is built, constructed, installed or established to perform some particular function or to serve or facilitate some particular end." *Id.* ¶ 20 (citing *Rosales*, 89 P.3d at 509).

The campsite in this case is plainly a public facility under these principles. It is operated by an instrument of government for the benefit of the public. It was built, constructed, and establish to perform a particular function – in this instance, to provide citizens of the State of Colorado with a place to perform the recreational pursuit of camping.

This functional definition of "facility," wedded to the CGIA's definition of "dangerous condition," is broad enough to include the falling tree branch that caused Burnett's injury within the waiver provision of § 24–10–106(1)(e), C.R.S.. As noted above, the CGIA defines "dangerous condition," in pertinent part, as "either a physical condition ***of*** a facility or the use thereof that constitutes an unreasonable risk to the health or safety of the public . . . ." § 24–10–103(1.3),

C.R.S. (emphasis added). Merriam-Webster defines the term "of" to mean "belonging to, relating to, or connected with (someone or something)." "Of" definition, Merriam-Webster.com, http://www.merriam-webster.com/dictionary/of (last visited Dec. 17, 2013). Under this interpretation, the dangerous condition (the falling tree branch) that caused Burnett's injury was plainly "of" the public facility (the campsite) or the use thereof, since the condition in question caused Burnett to be injured while occupying and using the facility. Writing in dissent below, Judge Carparelli averred that the CGIA's definition of "dangerous condition" applies to any condition that impacts the use of a facility in a way that constitutes an unreasonable risk to the health and safety of those who use it. *See Burnett*, 2013 COA 42, ¶ 44. The tree branch in this case plainly satisfies this definition, and the CTLA encourages this Court to adopt Judge Carparelli's reasoning.

3. The CGIA waives immunity for dangerous conditions arising from natural conditions, so long as those natural conditions are not "of unimproved property."

Notwithstanding the above, per the plain language of § 24-10-106(1)(e), C.R.S., the immunity waiver for dangerous conditions of public facilities located in parks and recreation areas maintained by public entities does not extend to natural conditions of unimproved property. In affirming the trial court's order dismissing Burnett's Complaint, the court of appeals held that the tree that injured Burnett was

a natural condition of unimproved property. *See Burnett*, 2013 COA 42, ¶¶ 10-23. The CTLA submits that the court of appeals interpreted the phrase "natural condition of any unimproved property" too broadly and in a manner that effectively reads the term "unimproved property" out of the statute.

Statutory construction is a question of law that is subject to de novo review. *Specialty Restaurants Corp. v. Nelson*, 231 P.3d 393, 397 (Colo. 2010). When interpreting a statute, this Court's primary responsibility is to give effect to the intent of the General Assembly. *Lombard v. Colo. Outdoor Educ. Ctr., Inc.*, 187 P.3d 565, 570 (Colo. 2008). The analysis should begin with the plain language of the statute. *Wolf Ranch, LLC v. Colo. Springs*, 220 P.3d 559, 563 (Colo. 2009). When the language is unambiguous, the Court should give effect to the plain and ordinary meaning of the statute without resorting to other rules of statutory construction. *Stamp v. Vail Corp.*, 172 P.3d 437, 442-43 (Colo. 2007). Words and phrases used in a statute are considered together and in context. *Pearson v. Dist. Court*, 924 P.2d 512, 516 (Colo. 1996). Importantly, when construing a statute, this Court should prefer an interpretation that gives effect to all of the words of the statute. *See Colo. Water Conservation Bd. v. Upper Gunnison River Water Conservancy Dist.*, 109 P.3d 585, 597 (Colo. 2005) ("[W]hen examining a statute's plain language, we give effect to every word and render none superfluous.").

The CGIA defines neither "natural condition" nor "unimproved property." However, as Judge Carparelli noted in dissent below, the term "unimproved property" typically refers to real property in its natural state and containing a variety of features, including "shrubs, trees, rocks, ruts, ditches, cliffs, and watercourses." *Burnett*, 2012 COA 42, ¶ 56. "When property is unimproved, these natural features have not been disturbed." *Id.* By contrast, the term "improvements," as applied in the tax code, refers to "structures, buildings, fixtures, fences, and water rights erected upon or affixed to land." *Id.* ¶ 57 (citing § 39-1-102(6.3), C.R.S.). Synthesizing the definitions of these two terms, Judge Carparelli averred that "property is unimproved when no structures or fixtures are built on or affixed to the land." *Id.*

As noted above, § 24-10-106(1)(e), C.R.S., states, "Nothing in this paragraph (e) . . . shall be construed to prevent a public entity from asserting sovereign immunity for an injury caused by the natural condition ***of*** any unimproved property, whether or not such property is located in a park or recreation area." Thus, the plain language of the statute requires that, in order to be excluded from the immunity waiver under this provision, the condition in question must be ***both*** "natural" ***and*** of "unimproved property."

In holding that the dangerous condition that injured Burnett fell outside the scope of the immunity waiver, the court of appeals stated in conclusory fashion that "the trees adjacent to Campsite No. 14 were in an unimproved part of the park." *Burnett*, 2012 COA 42, ¶ 11. Absent from the court of appeals' opinion was any significant discussion of why the dangerous condition that caused Burnett's injury should be considered to have been "in an unimproved part of the park" when, in fact, the tree branch that fell on her tent likely hung directly above the campsite, which is clearly a public facility.

Writing in dissent, Judge Carparelli engaged in an extended discussion of that very issue and, in the process, identified several problems with the majority approach. Judge Carparelli noted three possible interpretations of the immunity-conferring natural condition provision. First, he observed that the provision could apply whenever an injury occurs as a result of an object or condition that typically exists as a natural condition of unimproved property. *Id.* ¶ 61. The problem with this approach is that it would incentivize public entities to ignore dangerous conditions, such as a dead or rotten tree in the middle of a public playground, even when there exists a significant probability that the dangerous condition will result in injury. *Id.* ¶ 62. In addition to creating troubling incentives for public entities entrusted with maintaining public facilities in public parks and recreation areas,

this interpretation would effectively read the phrase "of unimproved property" out of the statute. Applying the immunity-conferring provision whenever an injury occurred due to pre-existing "natural condition" would render superfluous the General Assembly's decision to require that the injury-causing mechanism be both a "natural condition" ***and*** "of . . . unimproved property" in order for immunity to attach.

Likewise, the "natural condition" provision could be interpreted to mean that a public entity is immune whenever an injury occurs on a public facility as a result of a natural condition originating immediately adjacent to the public facility. *Id.* ¶ 64. This interpretation also creates troubling incentives – specifically, by encouraging public entities to leave unimproved land around public facilities, and by prompting those entities to refrain from pruning, trimming, or otherwise minimizing the danger posed by natural features like trees, lest those features lose their status as "natural conditions of unimproved property" *Id.* ¶ 65. This approach would also create myriad difficulties for trial courts, which would be required to determine on a case-by-case basis whether a particular "dangerous condition" was ultimately "of" the public facility or "of" the immediately adjacent unimproved property. In this particular case, for instance, the outcome below would have been quite different if the trunk of the tree whose branch injured

Burnett were situated a few feet closer to her tent. In that case, the tree would not have been a "natural feature of unimproved property," but would have been a "dangerous condition of [a] public facility" for which the CGIA waived immunity. Similar factual quandaries would arise whenever an occupant of a public facility was injured by a pre-existing natural feature located at or near the boundary of a public facility, especially where the precise boundary of the public facility was not clearly delineated or otherwise subject to ready determination. This case therefore presents one of a potentially infinite number of possible scenarios in which immunity determinations would hinge on fine, essentially arbitrary factual distinctions.

The better approach, as Judge Carparelli recognized, is to apply the immunity-conferring provision whenever an injury occurs on unimproved property ***and*** is caused by a natural condition of that property. *Id.* ¶ 60. Such a rule gives meaning to all of the words in the statute by requiring that an injury causing mechanism be both a "natural condition" and a condition of "unimproved property" in order for the responsible governmental entity to retain immunity. In addition, this rule would preserve governmental immunity for injuries resulting from dangerous conditions occurring as a result of natural conditions in unimproved areas of public parks and recreation areas. The Parks Division could

not, for instance, be held legally responsible for an injury caused by a falling tree located out in the middle of an unimproved portion of Cherry Creek State Park. Immunity would only be waived for dangerous conditions that cause injuries to persons who are actually in the process of occupying and using a public facility, such as a campsite. This approach would protect governmental entities from potentially limitless liability while nonetheless accomplishing one of the core purposes of the CGIA – namely, "to permit a person to seek redress for personal injuries caused by a public entity." *Moldovan*, 842 P.2d at 222.

4. The *Rosales* framework is not derived from the statutory text and forces trial courts to make arbitrary determinations. This Court should disapprove it in this case.

In contrast to the functional approach outlined above, which is ultimately grounded in the statutory language chosen by the General Assembly, the *Rosales* framework requires trial courts to make arbitrary factual determinations based on criteria that are not derived from the plain language of § 24-10-106(1)(e), C.R.S. The plaintiff in *Rosales* sustained injuries when she was struck by a falling tree branch while picnicking at a city park. *Rosales*, 89 P.3d at 508. In holding that the city retained immunity, the court first rejected the argument that the tree itself was a public facility. *Id.* at 508-10. The court then held that a natural object such as a tree could be considered part of a public facility if the public entity "incorporates

[the] tree into a facility in such a manner that it becomes an integral part of the facility and is essential for the intended use of the facility." *Id.* at 510.

The *Rosales* framework is problematic in multiple respects, particularly in light of this Court's repeated pronouncements that the CGIA's waiver provisions are to be construed broadly in favor of compensating injured victims of governmental negligence. First, the *Rosales* test is not derived from the language of § 24-10-106(1)(e), C.R.S., which nowhere states or even intimates that a feature must be an integral part of a public facility or essential for its intended use in order to qualify as a dangerous condition of the facility. Second, the test provides trial courts with no guidance to cabin its application, thereby leaving trial courts with essentially limitless discretion in determining whether a particular feature is sufficiently integrated into the facility to fit within the scope of the immunity waiver. The trial court's opinion in this case amply illustrates this ambiguity. In its Order granting the Parks Division's Motion to Dismiss, the trial court wrote:

> *Rosales* expressly rejected Plaintiff's present assertion that trees are integral and essential to a public facility because they provide protection, shade and aesthetic value. Trees cannot be considered essential to the intended use of the campsite within Cherry Creek State Park when numerous campsites do not have adjacent or surrounding trees.

(Order Granting Def.'s Mot. to Dismiss 3, C.D.@78.)

In fact, the *Rosales* court did not hold that a tree could not be integral or essential to a public facility such as a picnic area or campsite. Instead, the *Rosales* court remanded the case to the trial court to make a determination on whether the tree in question was an integral part of the facility, while expressing no opinion on the merits of the question. *Rosales*, 89 P.3d at 510. Nevertheless, by providing lower courts with no guidance concerning how to determine whether a particular feature is an integral part of a facility or essential to its intended use, the *Rosales* opinion invites the sort of misapplication that characterized the trial court's ruling in this case. Even more problematically, the *Rosales* test essentially requires lower courts to make arbitrary judgments about what kinds of pre-existing natural features are integral to a facility or essential for its intended use. There is no evidence that the General Assembly intended to burden trial courts with such unlimited discretion when it enacted § 24-10-106(1)(e), C.R.S.

In sum, the *Rosales* framework is not grounded in the language of § 24-10-106(1)(e), C.R.S. and is inconsistent with this Court's repeated instructions that the CGIA's immunity waivers are to be construed broadly in favor of compensating victims of governmental negligence. This Court should disapprove its use in this case, and should replace it with a straightforward rule that immunity is waived whenever an occupant of a public facility in a public park or recreation area is

injured by a dangerous condition impacting the facility, whether the condition stems ultimately from a man-made structure or a pre-existing natural feature.

C. APPLICATION OF THESE PRINCIPLES REQUIRES REVERSAL IN THIS CASE.

Under the rule that the CTLA encourages this Court to adopt, the lower courts' rulings are erroneous and should be reversed. The campsite on which Burnett was injured is plainly a public facility. The falling tree branch that injured Burnett (a) hung directly above the facility, and (b) caused an injury to Burnett while she was occupying and using the facility. Accordingly, the dangerous condition that caused Burnett's injury was a dangerous condition of the public facility, not a natural feature of unimproved property. This Court should hold accordingly.

VI. CONCLUSION

For the foregoing reasons, this Court should reverse the rulings of the trial court and the court of appeals, and should hold that Burnett's injury resulted from a dangerous condition of a public facility in a public park or recreation area, rather than a natural condition of unimproved property.

RESPECTFULLY SUBMITTED this 23rd day of December, 2013.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of December, 2013, a true and correct copy of the foregoing was filed with the Court and served via ICCES on the following:

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SUPREME COURT, STATE OF COLORADO 2 East 14th Ave. Denver, CO 80203 Telephone: (720) 625-5150 Opinion by the Court of Appeals Case No. 2011CA2141, Judge Fox Appeal from Arapahoe County District Court Case No. 2011CV664, The Hon. Gerald J. Rafferty **SARA L. BURNETT,** Petitioner, v. **STATE OF COLORADO/DEPARTMENT OF NATURAL RESOURCES/DIVISION OF PARKS & OUTDOOR RECREATION,** Respondent. **Attorney for Amicus Curiae Colorado Trial Lawyers Association:** John F. Poor, #40395 Law Offices of John F. Poor 36 Steele Street, Suite 200 Denver, Colorado 80206 Phone No.: 303-223-7983 Fax No.: 720-465-7022 Email: John@jfplaw.com	▲ **COURT USE ONLY** ▲ **Case No: 2013SC306**

APPENDIX TO BRIEF OF AMICUS CURIAE THE COLORADO TRIAL LAWYERS ASSOCIATION

Amicus Curiae Colorado Trial Lawyers Association ("CTLA") respectfully submits the following Appendix to Brief of Amicus Curiae the Colorado Trial

Lawyers Association in the above captioned case. It includes the following contents:

1. § 13-21-115, C.R.S.
2. § 24-10-101, C.R.S.
3. § 24-10-103, C.R.S.
4. § 37-60-126, C.R.S.
5. § 39-1-102, C.R.S.

RESPECTFULLY SUBMITTED this 23rd day of December, 2013.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of December, 2013, a true and correct copy of the foregoing was filed with the Court and served via ICCES on the following:

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C.R.S. 13-21-115

This document reflects changes current through all laws passed at the First Regular Sessionof the Sixty-Ninth General Assembly of the State of Colorado (2013)

13-21-115. Actions against landowners

(1) For the purposes of this section, "landowner" includes, without limitation, an authorized agent or a person in possession of real property and a person legally responsible for the condition of real property or for the activities conducted or circumstances existing on real property.

(1.5) The general assembly hereby finds and declares:

(a) That the provisions of this section were enacted in 1986 to promote a state policy of responsibility by both landowners and those upon the land as well as to assure that the ability of an injured party to recover is correlated with his status as a trespasser, licensee, or invitee;

(b) That these objectives were characterized by the Colorado supreme court as "legitimate governmental interests" in Gallegos v. Phipps, No. 88 SA 141 (September 18, 1989);

(c) That the purpose of amending this section in the 1990 legislative session is to assure that the language of this section effectuates these legitimate governmental interests by imposing on landowners a higher standard of care with respect to an invitee than a licensee, and a higher standard of care with respect to a licensee than a trespasser;

(d) That the purpose of this section is also to create a legal climate which will promote private property rights and commercial enterprise and will foster the availability and affordability of insurance;

(e) That the general assembly recognizes that by amending this section it is not reinstating the common law status categories as they existed immediately prior to *Mile Hi Fence v. Radovich, 175 Colo. 537, 489 P.2d 308 (1971)* but that its purpose is to protect landowners from liability in some circumstances when they were not protected at common law and to define the instances when liability will be imposed in the manner most consistent with the policies set forth in paragraphs (a), (c), and (d) of this subsection (1.5).

(2) In any civil action brought against a landowner by a person who alleges injury occurring while on the real property of another and by reason of the condition of such property, or activities conducted or circumstances existing on such property, the landowner shall be liable only as provided in subsection (3) of this section. *Sections 13-21-111*, *13-21-111.5*, and *13-21-111.7* shall apply to an action to which this section applies. This subsection (2) shall not be construed to abrogate the doctrine of attractive nuisance as applied to persons under fourteen years of age. A person who is at least fourteen years of age but is less than eighteen years of age shall be presumed competent for purposes of the application of this section.

(3)

(a) A trespasser may recover only for damages willfully or deliberately caused by the landowner.

(b) A licensee may recover only for damages caused:

(I) By the landowner's unreasonable failure to exercise reasonable care with respect to dangers created by the landowner of which the landowner actually knew; or

(II) By the landowner's unreasonable failure to warn of dangers not created by the landowner which are not ordinarily present on property of the type involved and of which the landowner actually knew.

(c)

(I) Except as otherwise provided in subparagraph (II) of this paragraph (c), an invitee may recover for damages caused by the landowner's unreasonable failure to exercise reasonable care to protect against dangers of which he actually knew or should have known.

(II) If the landowner's real property is classified for property tax purposes as agricultural land or vacant land, an invitee may recover for damages caused by the landowner's unreasonable failure to exercise reasonable care to protect against dangers of which he actually knew.

(3.5) It is the intent of the general assembly in enacting the provisions of subsection (3) of this section that the circumstances under which a licensee may recover include all of the circumstances under which a trespasser could recover and that the circumstances under which an invitee may recover include all of the circumstances under which a trespasser or a licensee could recover.

(4) In any action to which this section applies, the judge shall determine whether the plaintiff is a trespasser, a licensee, or an invitee, in accordance with the definitions set forth in subsection (5) of this section. If two or more landowners are parties defendant to the action, the judge shall determine the application of this section to each such landowner. The issues of liability and damages in any such action shall be determined by the jury or, if there is no jury, by the judge.

(5) As used in this section:

(a) "Invitee" means a person who enters or remains on the land of another to transact business in which the parties are mutually interested or who enters or remains on such land in response to the landowner's express or implied representation that the public is requested, expected, or intended to enter or remain.

(b) "Licensee" means a person who enters or remains on the land of another for the licensee's own convenience or to advance his own interests, pursuant to the landowner's permission or consent. "Licensee" includes a social guest.

(c) "Trespasser" means a person who enters or remains on the land of another without the landowner's consent.

(6) If any provision of this section is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the section shall be deemed valid.

History

Source:
L. 86: Entire section added, p. 683, § 1, effective May 16.L. 90: (1.5), (3.5), (5), and (6) added and (3) and (4) amended, p. 867, § 1, effective April 20.L. 2006: (2) amended, p. 344, § 1, effective April 5.

Annotations

Notes

Editor's note: Subsections (5)(a) and (5)(c), as they were enacted in House Bill 90-1107, were relettered on revision in 2002 as (5)(c) and (5)(a), respectively.

Case Notes

RECENT ANNOTATIONS

Section applies to conditions, activities, and circumstances on a property that the landowner is liable for in its capacity as a landowner. Defendant, in its capacity as a landowner, was responsible for the activities conducted and conditions on its premises, including the process of assisting a customer with loading a freezer he had purchased from defendant. *Larrieu v. Best Buy Stores, L.P., 2013 CO 38, 303 P.3d 558.*

Defendant is not a "landowner" where there is no evidence that it was in possession of the sidewalk or that it was responsible for creating a condition on the sidewalk or conducting an activity on the sidewalk that caused plaintiff's injuries. *Jordan v. Panorama Orthopedics & Spine Ctr., PC, 2013 COA 87,* -- P.3d -- [published June 6, 2013].

When a landowner is vicariously liable under the nondelegability doctrine for acts or omissions of other defendants, the trial court should instruct the jury to determine the respective shares of fault of the landowner and the other defendants. But, in entering a judgment, the court shall aggregate the fault of the landowner with any other defendants

C.R.S. 24-10-101

This document reflects changes current through all laws passed at the First Regular Sessionof the Sixty-Ninth General Assembly of the State of Colorado (2013)

24-10-101. Short title

This article shall be known and may be cited as the "Colorado Governmental Immunity Act".

History

Source:
L. 71: p. 1204, § 1. C.R.S. 1963: § 130-11-1.

Annotations

Notes

Cross references: For elections, see title 1; for peace officers and firefighters, see article 5 of title 29; for state engineer, see article 80 of title 37; for state chemist, see part 4 of article 1 of title 25; for offenses against government, see article 8 of title 18; for the "Uniform Records Retention Act", see article 17 of title 6.

Editor's note: The doctrine of sovereign immunity of the state, school districts, and counties was prospectively overruled in three Colorado supreme court decisions announced contemporaneously prior to July 1, 1972, the effective date of this article. In these decisions, the court held that the legislature had full authority to restore the doctrine, in whole or in part. The decisions are: *Evans v. Board of County Comm'rs of County of El Paso, 174 Colo. 97, 482 P.2d 968 (1971); Flournoy v. School Dist. No. 1 in City and County of Denver, 174 Colo. 110, 482 P.2d 966 (1971);* and *Proffitt v. State, 174 Colo. 113, 482 P.2d 965 (1971).*

Cross references: For applicability of the risk management fund to claims under this article, see § 24-30-1510.

Law reviews: For note, "The Colorado Governmental Immunity Act: A Judicial Challenge and the Legislative Response", see 43 U. Colo. L. Rev. 58 (1972); for comment, "The Colorado Governmental Immunity Act: A Prescription for Retrogression", see 49 Den. L. J. 567 (1973); for article, "Federal Practice and Procedure", which discusses a Tenth Circuit decision dealing with governmental immunity, see 62 Den. U. L. Rev. 227 (1985); for article, "Governmental Immunity: The Effect of Theories of Liability after Initial Notice", see 15 Colo. Law. 232 (1986); for article, "Amendments to the Colorado Governmental Immunity Act", see 15 Colo. Law. 1193 (1986); for article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986); for article, "New Role for Nonparties in Tort Actions -- The Empty Chair", see 15 Colo. Law. 1650 (1986); for article, "Colorado Municipal Liability after Annexing Potential Superfund Site", see 16 Colo. Law. 258 (1987); for comment, "Leake v. Cain: Abolition of the Public Duty Rule and the status of Governmental Immunity in Colorado", see 64 Den. U. L. Rev. 733 (1988); for comment, "Leake v. Cain: Abrogation of the Public Duty Doctrine in Colorado?", see 59 U. Colo. L. Rev. 383 (1988); for article, "Governmental Immunity Act Developments", see 17 Colo. Law. 1525 (1988); for article, "Section 1983 Litigation in State Courts: A Review", see 18 Colo. Law. 27 (1989); for article, "Asserting Governmental Immunity by Attacking Subject Matter Jurisdiction", see 22 Colo. 2551 (1993); for article, "The Changing Concept of Governmental Immunity", see 23 Colo. Law. 603 (1994); for article, "Recent Developments in Governmental Immunity: PostTrinity Broadcasting", see 25 Colo. Law. 43 (June 1996); for article, "Interpreting the Colorado Governmental Immunity Act", see 26 Colo. Law. 77 (February 1997).

Case Notes

ANNOTATION

Applied in
Kratzenstein v. Bd. of County Comm'rs, 674 P.2d 1009 (Colo. App. 1983).

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L. Rev. 733 (1988); for comment, "Leake v. do?", see 59 U. Colo. L. Rev. 383 (1988); for , see 17 Colo. Law. 1525 (1988); for article, ', see 18 Colo. Law. 27 (1989); for article, ject Matter Jurisdiction", see 22 Colo. 2551 nmental Immunity", see 23 Colo. Law. 603 nental Immunity: Post-Trinity Broadcasting", reting the Colorado Governmental Immunity

known and may be cited as the "Colorado

§ 130-11-1.

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cognized by the general assembly that the state and its political subdivisions are often rivate persons, is, in some instances, an lso recognizes that the supreme court has effective July 1, 1972, and that thereafter the t as may be provided by statute. The general olitical subdivisions provide essential public bility could disrupt or make prohibitively ublic services and functions. The general would ultimately bear the fiscal burdens of the liability of public entities and public e taxpayers against excessive fiscal burdens. whether elected or appointed, should be ility so that such public employees are not functions required by the citizens or from by law. It is further recognized that the state,

its political subdivisions, and the public employees of such public entities, by virtue of the services and functions provided, the powers exercised, and the consequences of unlimited liability to the governmental process, should be liable for their actions and those of their agents only to such an extent and subject to such conditions as are provided by this article. The general assembly also recognizes the desirability of including within one article all the circumstances under which the state, any of its political subdivisions, or the public employees of such public entities may be liable in actions which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant and that the distinction for liability purposes between governmental and proprietary functions should be abolished.

Source: L. 71: p. 1204, § 1. **C.R.S. 1963:** § 130-11-2. **L. 79:** Entire section amended, p. 862, § 1, effective July 1. **L. 86:** Entire section amended, p. 873, § 1, effective July 1.

ANNOTATION

The denial of compensation is the constitutional result of the doctrine of sovereign immunity. In re Air Crash Disaster at Stapleton, 720 F. Supp. 1465 (D. Colo. 1989).

The Colorado Governmental Immunity Act is constitutional and classifications restricting recovery by various tort victims bear a rational relationship to the legitimate state interests of fiscal certainty. The fact that the state compensation insurance authority and the state compensation insurance fund were covered by the Colorado Governmental Immunity Act while private insurers were not was not a denial of equal protection. Simon v. State Compensation Ins. Auth., 903 P.2d 1139 (Colo. App. 1994), rev'd on other grounds, 946 P.2d 1298 (Colo. 1997).

Just compensation clause of constitution creates exception to doctrine of governmental immunity. Srb v. Bd. of County Comm'rs, 43 Colo. App. 14, 601 P.2d 1082 (1979), cert. dismissed, 199 Colo. 496, 618 P.2d 1105 (1980).

As does making of legislative contract. The making of a contract pursuant to legislative authority is a waiver by the state of its immunity from suit and of any statutory requirement for the filing of claims. Ace Flying Serv., Inc. v. Colo. Dept. of Agric., 136 Colo. 19, 314 P.2d 278 (1957) (decided under former CRS 53, § 130-2-1).

The Colorado Governmental Immunity Act does not apply to claims based on federal civil rights violations. Martinez v. El Paso County, 673 F. Supp. 1030 (D. Colo. 1987).

The Colorado Governmental Immunity Act governs the circumstances under which a person may maintain a tort action against the state, its political subdivisions, and its employees. Mesa County Valley Sch. Dist. v. Kelsey, 8 P.3d 1200 (Colo. 2000).

No immunity for sister state's activities in this state. Where an injured party is a citizen of this state, injured in this state, and sues in the courts of this state, there is no immunity, by law or as a matter of comity, covering a sister state's activities in this state. Peterson v. State of Texas, 635 P.2d 241 (Colo. App. 1981).

State statutory provisions control over conflicting city charter. If a city charter establishes a different notice of claim procedure, it conflicts with the state statutory provisions, and when a conflict exists in a matter of both statewide and local concern, the state statute controls. Lipira v. City of Thornton, 41 Colo. App. 401, 585 P.2d 932 (1978).

The Colorado Governmental Immunity Act derogates Colorado's common law. Consequently, statute's immunity provisions are to be strictly construed. As a logical corollary, provisions withholding immunity are also to be strictly construed in the interest of compensating victims of governmental negligence. Padilla ex rel. Padilla v. Sch. Dist. No. 1, 25 P.3d 1176 (Colo. 2001); Podboy v. Fraternal Order of Police, 94 P.3d 1226 (Colo. App. 2004).

The protections afforded under the Colorado Governmental Immunity Act attach on the date the negligence is alleged to have occurred. Muniz v. Garner, 921 F. Supp. 700 (D. Colo. 1996).

Applied in City of Colo. Springs v. Gladin, 198 Colo. 333, 599 P.2d 907 (1979); South of Second Assocs. v. Georgetown, 199 Colo. 394, 609 P.2d 125 (1980); Forrest v. County Comm'rs, 629 P.2d 1105 (Colo. App. 1981); Young v. State, 642 P.2d 18 (Colo. App. 1981); Mucci v. Falcon Sch. Dist. No. 49, 655 P.2d 422 (Colo. App. 1982).

24-10-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Dangerous condition" means a physical condition of a facility or the use thereof that constitutes an unreasonable risk to the health or safety of the public, which is known to exist or which in the exercise of reasonable care should have been known to exist and

which condition is proximately caused by the negligent act or omission of the public entity or public employee in constructing or maintaining such facility. For the purposes of this subsection (1), a dangerous condition should have been known to exist if it is established that the condition had existed for such a period and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered. A dangerous condition shall not exist solely because the design of any facility is inadequate. The mere existence of wind, water, snow, ice, or temperature shall not, by itself, constitute a dangerous condition.

(1.5) "Health care practitioner" means a physician, dentist, clinical psychologist, or any other person acting at the direction or under the supervision or control of any such persons.

(2) "Injury" means death, injury to a person, damage to or loss of property, of whatsoever kind, which, if inflicted by a private person, would lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant.

(2.5) "Maintenance" means the act or omission of a public entity or public employee in keeping a facility in the same general state of repair or efficiency as initially constructed or in preserving a facility from decline or failure. "Maintenance" does not include any duty to upgrade, modernize, modify, or improve the design or construction of a facility.

(2.7) "Motor vehicle" means a motor vehicle as defined in section 42-1-102, C.R.S., and a light rail car or engine owned or leased by a public entity.

(3) (a) "Operation" means the act or omission of a public entity or public employee in the exercise and performance of the powers, duties, and functions vested in them by law with respect to the purposes of any public hospital, jail, or public water, gas, sanitation, power, or swimming facility. "Operation" does not include any duty to upgrade, modernize, modify, or improve the design or construction of a facility.

(b) The term "operation" shall not be construed to include:

(I) A failure to exercise or perform any powers, duties, or functions not vested by law in a public entity or employee with respect to the purposes of any public facility set forth in paragraph (a) of this subsection (3);

(II) A negligent or inadequate inspection or a failure to make an inspection of any property, except property owned or leased by the public entity, to determine whether such property constitutes a hazard to the health or safety of the public.

(4) (a) "Public employee" means an officer, employee, servant, or authorized volunteer of the public entity, whether or not compensated, elected, or appointed, but does not include an independent contractor or any person who is sentenced to participate in any type of useful public service. For the purposes of this subsection (4), "authorized volunteer" means a person who performs an act for the benefit of a public entity at the request of and subject to the control of such public entity and includes a qualified volunteer as defined in section 24-32-2202 (6).

(b) "Public employee" includes any of the following:

(I) Any health care practitioner employed by a public entity, except for any health care practitioner who is employed on less than a full-time basis by a public entity and who additionally has an independent or other health care practice. Any such person employed on less than a full-time basis by a county or a district public health agency and who additionally has an independent or other health care practice shall maintain the status of a public employee only when such person engages in activities at or for the county or the district public health agency that are within the course and scope of such person's responsibilities as an employee of the county or the district public health agency. For purposes of this subparagraph (I), work performed as an employee of another public entity or of an entity of the United States government shall not be considered to be an independent or other health care practice.

(II) Any health care practitioner employed part-time by and holding a clinical faculty appointment at a public entity as to any injury caused by a health care practitioner-in-training under such health care practitioner's supervision. Any such person shall maintain the status of a public employee when such person engages in supervisory and educational activities over a health care practitioner-in-training at a nonpublic entity if said activities are

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n of a public entity or public employee pair or efficiency as initially constructed Maintenance" does not include any duty sign or construction of a facility. as defined in section 42-1-102, C.R.S., a public entity. of a public entity or public employee in s, and functions vested in them by law il, jail, or public water, gas, sanitation, include any duty to upgrade, modernize, a facility. ed to include: s, duties, or functions not vested by law purposes of any public facility set forth

a failure to make an inspection of any public entity, to determine whether such ty of the public. employee, servant, or authorized volun- ated, elected, or appointed, but does not ho is sentenced to participate in any type subsection (4), "authorized volunteer" it of a public entity at the request of and cludes a qualified volunteer as defined in

llowing: a public entity, except for any health care l-time basis by a public entity and who e practice. Any such person employed on district public health agency and who are practice shall maintain the status of a s in activities at or for the county or the he course and scope of such person's or the district public health agency. For d as an employee of another public entity all not be considered to be an independent

art-time by and holding a clinical faculty caused by a health care practitioner-in- pervision. Any such person shall maintain n engages in supervisory and educational g at a nonpublic entity if said activities are

within the course and scope of such person's responsibilities as an employee of a public entity.

(III) Any health care practitioner-in-training who is duly enrolled and matriculated in an educational program of a public entity and who is working at either a public entity or a nonpublic entity. Any such person shall maintain the status of a public employee when such person engages in professional or educational activities at a nonpublic entity if said activities are within the course and scope of such person's responsibilities as a student or employee of a public entity.

(IV) Any health care practitioner who is a nurse licensed under article 38 of title 12, C.R.S., employed by a public entity. Any such person shall maintain the status of a public employee only when such person engages in activities at or for the public entity which are within the course and scope of such person's responsibilities as an employee of the public entity.

(V) Any health care practitioner who volunteers services at or on behalf of a public entity, or who volunteers services as a participant in the community maternity services program;

(VI) Any release hearing officer utilized by the department of corrections and the state board of parole pursuant to section 17-2-217 (1), C.R.S. A release hearing officer shall maintain the status of a public employee only when the release hearing officer engages in activities that are within the course and scope of his or her responsibilities as a release hearing officer.

(VII) Any administrative hearing officer utilized by the department of corrections and the state board of parole pursuant to section 17-2-201 (3) (c) (I), C.R.S. An administrative hearing officer shall maintain the status of a public employee only when the administrative hearing officer engages in activities that are within the course and scope of his or her responsibilities as an administrative hearing officer.

(5) "Public entity" means the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof organized pursuant to law and any separate entity created by intergovernmental contract or cooperation only between or among the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.

(5.5) "Public sanitation facility" means structures and related apparatus used in the collection, treatment, or disposition of sewage or industrial wastes of a liquid nature that is operated and maintained by a public entity. "Public sanitation facility" does not include: A public water facility; a natural watercourse even if dammed, channelized, or containing storm water runoff, discharge from a storm sewer, or discharge from a sewage treatment plant outfall; a drainage, borrow, or irrigation ditch even if the ditch contains storm water runoff or discharge from storm sewers; a curb and gutter system; or other drainage, flood control, and storm water facilities.

(5.7) "Public water facility" means structures and related apparatus used in the collection, treatment, or distribution of water for domestic and other legal uses that is operated and maintained by a public entity. "Public water facility" does not include: A public sanitation facility; a natural watercourse even if dammed, channelized, or used for transporting domestic water supplies; a drainage, borrow, or irrigation ditch even if dammed, channelized, or containing storm water runoff or discharge; or a curb and gutter system.

(6) "Sidewalk" means that portion of a public roadway between the curb lines or the lateral lines of the traveled portion and the adjacent property lines which is constructed, designed, maintained, and intended for the use of pedestrians.

Source: L. 71: p. 1205, § 1. **C.R.S. 1963:** § 130-11-3. **L. 82:** (4) amended, p. 604, § 6, effective July 1. **L. 86:** (1), (2), and (4) amended, p. 874, § 2, effective July 1. **L. 87:** (4) amended and (1.5) added, p. 929, § 1, effective June 20. **L. 88:** (4)(b)(I) amended and (4)(b)(IV) and (4)(b)(V) added, p. 893, § 1, effective March 20. **L. 92:** (1) and (5) amended and (6) added, p. 1115, § 1, effective July 1. **L. 93:** (4) amended, p. 571, § 1, effective April 30. **L. 2002:** (4)(b)(VI) added, p. 490, § 1, effective May 24. **L. 2003:** (1)

and (3)(a) amended and (2.5), (5.5), and (5.7) added, p. 1343, § 2, effective July 1. **L. 2004:** (4)(b)(V) amended, p. 1200, § 61, effective August 4. **L. 2007:** (2.7) added, p. 1025, § 1, effective July 1. **L. 2008:** (4)(b)(VII) added, p. 32, § 1, effective March 13; (4)(b)(I) amended, p. 2051, § 2, effective July 1; (4)(a) amended, p. 610, § 2, effective August 5.

Cross references: (1) For the exclusion of children ordered to participate in a work or community service program from the definition of "public employee", see § 19-2-308 (8).

(2) For the legislative declaration contained in the 2003 act amending subsections (1) and (3)(a) and enacting subsections (2.5), (5.5), and (5.7), see section 1 of chapter 182, Session Laws of Colorado 2003.

ANNOTATION

Law reviews. For article, "Public Liability for Privately Employed Security Personnel", see 16 Colo. Law. 2175 (1987).

To recover under the "dangerous condition" of the Colorado Governmental Immunity Act (CGIA), a plaintiff must show as a threshold jurisdictional matter that the condition upon which the plaintiff bases his tort claim existed because of the government's act or omission in maintaining or constructing the condition rather than the government's design of the condition. Swieckowski v. City of Fort Collins, 934 P.2d 1380 (Colo. 1997).

Under the CGIA, the "dangerous condition" must be proximately caused by the negligent act or omission of the public entity in constructing or maintaining a public facility. Jaffe v. City & County of Denver, 15 P.3d 806 (Colo. App. 2000).

A public entity constructs a building within the definition of "dangerous condition" even though it hires an independent contractor to perform the work for it. Springer v. City & County of Denver, 13 P.3d 794 (Colo. 2000).

The common meaning of the word "maintain", its legislative history, and Colorado case law support the court of appeals finding that a failure to "maintain" means a failure to keep a facility in the same general state of being, repair, or efficiency as initially constructed. Swieckowski v. City of Fort Collins, 934 P.2d 1380 (Colo. 1997).

The duties of the public entity, for immunity purposes, to maintain do not include any duty to upgrade, modernize, or improve the design or construction of a facility. Springer v. City & County of Denver, 990 P.2d 1092 (Colo. App. 1999), rev'd on other grounds, 13 P.3d 794 (Colo. 2000).

The duty to maintain does not include any duty to upgrade, modernize, modify, or improve the design or construction of a facility. Lyons v. City of Aurora, 987 P.2d 900 (Colo. App. 1999); Jaffe v. City & County of Denver, 15 P.3d 806 (Colo. App. 2000).

The city's failure to make improvements for the safety of players on its public golf courses did not create a "dangerous condition" on the golf course for purposes of the CGIA. Jaffe v. City & County of Denver, 15 P.3d 806 (Colo. App. 2000).

City is immune from liability for a roadway's abrupt transition at the ditch because the roadway was in the same condition as when it was originally constructed. Because the roadway remained unchanged, the city did not repair the roadway, and is immune from any claims for negligence for allowing this condition to exist. Swieckowski v. City of Fort Collins, 934 P.2d 1380 (Colo. 1997).

A condition is "dangerous" only if it relates to the physical or structural condition of the facility at issue. King v. U.S., 53 F. Supp.2d 1056 (D. Colo. 1999).

This section expressly excludes from the definition of "dangerous condition" any danger solely attributable to inadequate design. Swieckowski v. City of Fort Collins, 934 P.2d 1380 (Colo. 1997); Jaffe v. City & County of Denver, 15 P.3d 806 (Colo. App. 2000).

The condition must be associated with construction or maintenance, not solely design. Padilla ex rel. Padilla v. Sch. Dist. No. 1, 25 P.3d 1176 (Colo. 2001).

To be actionable, the state of the building or use of the building and the resulting injury therefrom must: (1) Have occurred in connection with a negligent act or omission of the governmental entity, not a third party; (2) be associated with "constructing" or "maintaining" the facility; and (3) not be due solely to the facility's design. Padilla ex rel. Padilla v. Sch. Dist. No. 1, 25 P.3d 1176 (Colo. 2001); Curtis v. Hyland Hills Park & Rec. Dist., 179 P.3d 81 (Colo. App. 2007).

Absence of someone to regulate the spacing of people in rafts on a water attraction did not constitute a dangerous condition because there was no physical defect in attraction's construction or maintenance. Curtis v. Hyland Hills Park & Rec. Dist., 179 P.3d 81 (Colo. App. 2007).

A "dangerous condition" exists in a public building only if the condition stems from a physical or structural defect in the building. Jenks v. Sullivan, 826 P.2d 825 (Colo. 1992);

The existence of a special relationship, by itself, does not operate as a waiver of immunity under the Colorado Governmental Immunity Act. Rather, such a relationship creates a duty that may subject defendants to liability only if it is first determined that defendant's sovereign immunity is waived for the activity in question. Richardson ex rel. Richardson v. Starks, 36 P.3d 168 (Colo. App. 2001).

Court applied definition of "willful and wanton" found in § 13-21-102 (1)(b). King v. U.S., 53 F. Supp.2d 1056 (D. Colo. 1999).

To satisfy the willful and wanton exception to the Colorado Governmental Immunity Act, a plaintiff must establish not only the elements of a claim for defamation, but also that the defendant's conduct was done heedlessly and recklessly, without regard to the consequences, or rights and safety of others, particularly plaintiff. Drake v. City & County of Denver, 953 F. Supp. 1150 (D. Colo. 1997).

The Colorado Governmental Immunity Act does not shield public entities from an award for attorney's fees for the filing of a frivolous claim by such entities. Colo. City Metro. Dist. v. Graber & Son's, Inc., 897 P.2d 874 (Colo. App. 1995).

Article not applicable to contractual statutory breaches. This article is not meant to apply to situations where the action concerns the breach of a contractual statutory duty. Julesburg Sch. Dist. No. RE-1 v. Ebke, 193 Colo. 40, 562 P.2d 419 (1977).

Claims asking for orders for water services cannot lie in tort. They constitute, in effect, a mandamus action. Jones v. Ne. Durango Water Dist., 622 P.2d 92 (Colo. App. 1980).

Defendants did not make alleged defamatory statements within the scope of employment as law enforcement officers employed by the Denver sheriff department and are therefore not immune from liability under the CGIA. Defendants made alleged statements during fraternal order of police (FOP) directors meetings concerning FOP business in their capacity as officers of the FOP, not as employees of the Denver sheriff Department. Podboy v. Fraternal Order of Police, 94 P.3d 1226 (Colo. App. 2004).

Applied in Gray v. City of Manitou Springs, 43 Colo. App. 60, 598 P.2d 527 (1979); State Comp. Ins. Fund v. City of Colo. Springs, 43 Colo. App. 112, 602 P.2d 881 (1979).

24-10-106. Immunity and partial waiver. (1) A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section. Sovereign immunity is waived by a public entity in an action for injuries resulting from:

(a) The operation of a motor vehicle, owned or leased by such public entity, by a public employee while in the course of employment, except emergency vehicles operating within the provisions of section 42-4-108 (2) and (3), C.R.S.;

(b) The operation of any public hospital, correctional facility, as defined in section 17-1-102, C.R.S., or jail by such public entity;

(c) A dangerous condition of any public building;

(d) (I) A dangerous condition of a public highway, road, or street which physically interferes with the movement of traffic on the paved portion, if paved, or on the portion customarily used for travel by motor vehicles, if unpaved, of any public highway, road, street, or sidewalk within the corporate limits of any municipality, or of any highway which is a part of the federal interstate highway system or the federal primary highway system, or of any highway which is a part of the federal secondary highway system, or of any highway which is a part of the state highway system on that portion of such highway, road, street, or sidewalk which was designed and intended for public travel or parking thereon. As used in this section, the phrase "physically interferes with the movement of traffic" shall not include traffic signs, signals, or markings, or the lack thereof. Nothing in this subparagraph (I) shall preclude a particular dangerous accumulation of snow, ice, sand, or gravel from being found to constitute a dangerous condition in the surface of a public roadway when the entity fails to use existing means available to it for removal or mitigation of such accumulation and when the public entity had actual notice through the proper public official responsible for the roadway and had a reasonable time to act.

(II) A dangerous condition caused by the failure to realign a stop sign or yield sign which was turned, without authorization of the public entity, in a manner which reassigned the right-of-way upon intersecting public highways, roads, or streets, or the failure to repair a traffic control signal on which conflicting directions are displayed;

Article not applicable to contractual statutory breaches. This article is not meant to apply to situations where the action concerns the breach of a contractual statutory duty. Julesburg Sch. Dist. No. RE-1 v. Ebke, 193 Colo. 40, 562 P.2d 419 (1977).

Claims asking for orders for water services cannot lie in tort. They constitute, in effect, a mandamus action. Jones v. Ne. Durango Water Dist., 622 P.2d 92 (Colo. App. 1980).

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Applied in Gray v. City of Manitou Springs, 43 Colo. App. 60, 598 P.2d 527 (1979); State Comp. Ins. Fund v. City of Colo. Springs, 43 Colo. App. 112, 602 P.2d 881 (1979).

(1) A public entity shall be immune from
t or could lie in tort regardless of whether
f relief chosen by the claimant except as
nmunity is waived by a public entity in an

l or leased by such public entity, by a public
xcept emergency vehicles operating within
C.R.S.;

correctional facility, as defined in section

uilding;

highway, road, or street which physically
paved portion, if paved, or on the portion
, if unpaved, of any public highway, road,
f any municipality, or of any highway which
n or the federal primary highway system, or
condary highway system, or of any highway
1 that portion of such highway, road, street,
for public travel or parking thereon. As used
es with the movement of traffic" shall not
e lack thereof. Nothing in this subparagraph
mulation of snow, ice, sand, or gravel from
1 in the surface of a public roadway when the
to it for removal or mitigation of such
ctual notice through the proper public official
able time to act.

failure to realign a stop sign or yield sign
public entity, in a manner which reassigned
ways, roads, or streets, or the failure to repair
irections are displayed;

(III) A dangerous conditi d by an accumulation of snow and ice which physically interferes with public access on walks leading to a public building open for public business when a public entity fails to use existing means available to it for removal or mitigation of such accumulation and when the public entity had actual notice of such condition and a reasonable time to act.

(e) A dangerous condition of any public hospital, jail, public facility located in any park or recreation area maintained by a public entity, or public water, gas, sanitation, electrical, power, or swimming facility. Nothing in this paragraph (e) or in paragraph (d) of this subsection (1) shall be construed to prevent a public entity from asserting sovereign immunity for an injury caused by the natural condition of any unimproved property, whether or not such property is located in a park or recreation area or on a highway, road, or street right-of-way.

(f) The operation and maintenance of any public water facility, gas facility, sanitation facility, electrical facility, power facility, or swimming facility by such public entity;

(g) The operation and maintenance of a qualified state capital asset that is the subject of a leveraged leasing agreement pursuant to the provisions of part 10 of article 82 of this title;

(h) Failure to perform an education employment required background check as described in section 13-80-103.9, C.R.S.

(1.5) (a) The waiver of sovereign immunity created in paragraphs (b) and (e) of subsection (1) of this section does not apply to claimants who have been convicted of a crime and incarcerated in a correctional facility or jail pursuant to such conviction, and such correctional facility or jail shall be immune from liability as set forth in subsection (1) of this section.

(b) The waiver of sovereign immunity created in paragraphs (b) and (e) of subsection (1) of this section does apply to claimants who are incarcerated but not yet convicted of the crime for which such claimants are being incarcerated if such claimants can show injury due to negligence.

(c) The waiver of sovereign immunity created in paragraph (e) of subsection (1) of this section does not apply to any backcountry landing facility located in whole or in part within any park or recreation area maintained by a public entity. For purposes of this paragraph (c), "backcountry landing facility" means any area of land or water that is unpaved, unlighted, and in a primitive condition and is used or intended for the landing and takeoff of aircraft, and includes any land or water appurtenant to such area.

(2) Nothing in this section or in section 24-10-104 shall be construed to constitute a waiver of sovereign immunity where the injury arises from the act, or failure to act, of a public employee where the act is the type of act for which the public employee would be or heretofore has been personally immune from liability.

(3) In addition to the immunity provided in subsection (1) of this section, a public entity shall also have the same immunity as a public employee for any act or failure to act for which a public employee would be or heretofore has been personally immune from liability.

(4) No rule of law imposing absolute or strict liability shall be applied in any action against a public entity or a public employee for an injury resulting from a dangerous condition of, or the operation and maintenance of, a public water facility or public sanitation facility. No liability shall be imposed in any such action unless negligence is proven.

Source: L. 71: p. 1206, § 1. **C.R.S. 1963:** § 130-11-6. **L. 79:** (1)(b) amended, p. 702, § 76, effective June 21. **L. 86:** IP(1), (1)(b), (1)(d), (1)(e), (1)(f), and (2) amended and (3) added, p. 875, § 5, effective July 1. **L. 87:** (4) added, p. 931, § 1, effective May 13. **L. 92:** (1)(d) amended, p. 1116, § 2, effective July 1. **L. 94:** (1.5) added, p. 2087, § 1, effective July 1; (1)(a) amended, p. 2556, § 53, effective January 1, 1995. **L. 2002:** (1.5)(c) added, p. 63, § 1, effective March 22. **L. 2004:** (1)(g) added, p. 1056, § 1, effective May 21. **L. 2008:** (1)(h) added, p. 2226, § 4, effective June 5.

C.R.S. 37-60-126

This document reflects changes current through all laws passed at the First Regular Sessionof the Sixty-Ninth General Assembly of the State of Colorado (2013)

37-60-126. Water conservation and drought mitigation planning - programs - relationship to state assistance for water facilities - guidelines - water efficiency grant program - repeal

(1) As used in this section and *section 37-60-126.5*, unless the context otherwise requires:

(a) "Agency" means a public or private entity whose primary purpose includes the promotion of water resource conservation.

(b) "Covered entity" means each municipality, agency, utility, including any privately owned utility, or other publicly owned entity with a legal obligation to supply, distribute, or otherwise provide water at retail to domestic, commercial, industrial, or public facility customers, and that has a total demand for such customers of two thousand acre-feet or more.

(c) "Grant program" means the water efficiency grant program established pursuant to subsection (12) of this section.

(d) "Office" means the office of water conservation and drought planning created in *section 37-60-124*.

(e) "Plan elements" means those components of water conservation plans that address water-saving measures and programs, implementation review, water-saving goals, and the actions a covered entity shall take to develop, implement, monitor, review, and revise its water conservation plan.

(f) "Public facility" means any facility operated by an instrument of government for the benefit of the public, including, but not limited to, a government building; park or other recreational facility; school, college, university, or other educational institution; highway; hospital; or stadium.

(g) "Water conservation" means water use efficiency, wise water use, water transmission and distribution system efficiency, and supply substitution. The objective of water conservation is a long-term increase in the productive use of water supply in order to satisfy water supply needs without compromising desired water services.

(h) "Water conservation plan", "water use efficiency plan", or "plan" means a plan adopted in accordance with this section.

(i) "Water-saving measures and programs" includes a device, a practice, hardware, or equipment that reduces water demands and a program that uses a combination of measures and incentives that allow for an increase in the productive use of a local water supply.

(2)

(a) Each covered entity shall, subject to *section 37-60-127*, develop, adopt, make publicly available, and implement a plan pursuant to which such covered entity shall encourage its domestic, commercial, industrial, and public facility customers to use water more efficiently. Any state or local governmental entity that is not a covered entity may develop, adopt, make publicly available, and implement such a plan.

(b) The office shall review previously submitted conservation plans to evaluate their consistency with the provisions of this section and the guidelines established pursuant to paragraph (a) of subsection (7) of this section.

(c) On and after July 1, 2006, a covered entity that seeks financial assistance from either the board or the Colorado water resources and power development authority shall submit to the board a new or revised plan to meet water conservation goals adopted by the covered entity, in accordance with this section, for the board's approval prior to the release of new loan proceeds.

(3) The manner in which the covered entity develops, adopts, makes publicly available, and implements a plan established pursuant to subsection (2) of this section shall be determined by the covered entity in accordance with this section. The plan shall be accompanied by a schedule for its implementation. The plans and schedules shall be provided to the office within ninety days after their adoption. For those entities seeking finan-

cial assistance, the office shall then notify the covered entity and the appropriate financing authority that the plan has been reviewed and whether the plan has been approved in accordance with this section.

(4) A plan developed by a covered entity pursuant to subsection (2) of this section shall, at a minimum, include a full evaluation of the following plan elements:

(a) The water-saving measures and programs to be used by the covered entity for water conservation. In developing these measures and programs, each covered entity shall, at a minimum, consider the following:

(I) Water-efficient fixtures and appliances, including toilets, urinals, clothes washers, showerheads, and faucet aerators;

(II) Low water use landscapes, drought-resistant vegetation, removal of phreatophytes, and efficient irrigation;

(III) Water-efficient industrial and commercial water-using processes;

(IV) Water reuse systems;

(V) Distribution system leak identification and repair;

(VI) Dissemination of information regarding water use efficiency measures, including by public education, customer water use audits, and water-saving demonstrations;

(VII)

(A) Water rate structures and billing systems designed to encourage water use efficiency in a fiscally responsible manner.

(B) The department of local affairs may provide technical assistance to covered entities that are local governments to implement water billing systems that show customer water usage and that implement tiered billing systems.

(VIII) Regulatory measures designed to encourage water conservation;

(IX) Incentives to implement water conservation techniques, including rebates to customers to encourage the installation of water conservation measures;

(b) A section stating the covered entity's best judgment of the role of water conservation plans in the covered entity's water supply planning;

(c) The steps the covered entity used to develop, and will use to implement, monitor, review, and revise, its water conservation plan;

(d) The time period, not to exceed seven years, after which the covered entity will review and update its adopted plan; and

(e) Either as a percentage or in acre-foot increments, an estimate of the amount of water that has been saved through a previously implemented conservation plan and an estimate of the amount of water that will be saved through conservation when the plan is implemented.

(4.5)

(a) On an annual basis starting no later than June 30, 2014, covered entities shall report water use and conservation data, to be used for statewide water supply planning, following board guidelines pursuant to paragraph (b) of this subsection (4.5), to the board by the end of the second quarter of each year for the previous calendar year.

(b) No later than February 1, 2012, the board shall adopt guidelines regarding the reporting of water use and conservation data by covered entities and shall provide a report to the senate agriculture and natural resources committee and the house of representatives agriculture, livestock, and natural resources committee, or their successor committees, regarding the guidelines. These guidelines shall:

(I) Be adopted pursuant to the board's public participation process and shall include outreach to stakeholders from water providers with geographic and demographic diversity, nongovernmental organizations, and water conservation professionals; and

(II) Include clear descriptions of: Categories of customers, uses, and measurements; how guidelines will be implemented; and how data will be reported to the board.

(c)

(I) No later than February 1, 2019, the board shall report to the senate agriculture and natural resources committee and the house of representatives agriculture, livestock, and natural resources committee, or their successor committees, on the guidelines and data collected by the board under the guidelines.

(II) This paragraph (c) is repealed, effective July 1, 2020.

(5) Each covered entity and other state or local governmental entity that adopts a plan shall follow the entity's rules, codes, or ordinances to make the draft plan available for public review and comment. If there are no rules, codes, or ordinances governing the entity's public planning process, then each entity shall publish a draft plan, give public notice of the plan, make such plan publicly available, and solicit comments from the public for a period of not less than sixty days after the date on which the draft plan is made publicly available. Reference shall be made in the public notice to the elements of a plan that have already been implemented.

(6) The board is hereby authorized to recommend the appropriation and expenditure of revenues as are necessary from the unobligated balance of the five percent share of the severance tax operational fund designated for use by the board for the purpose of the office providing assistance to covered entities to develop water conservation plans that meet the provisions of this section.

(7)

(a) The board shall adopt guidelines for the office to review water conservation plans submitted by covered entities and other state or local governmental entities. The guidelines shall define the method for submitting plans to the office, the methods for office review and approval of the plans, and the interest rate surcharge provided for in paragraph (a) of subsection (9) of this section.

(b) If no other applicable guidelines exist as of June 1, 2007, the board shall adopt guidelines by July 31, 2007, for the office to use in reviewing applications submitted by covered entities, other state or local governmental entities, and agencies for grants from the grant program and from the grant program established in *section 37-60-126.5 (3)*. The guidelines shall establish deadlines and procedures for covered entities, other state or local governmental entities, and agencies to follow in applying for grants and the criteria to be used by the office and the board in prioritizing and awarding grants.

(8) A covered entity may at any time adopt changes to an approved plan in accordance with this section after notifying and receiving concurrence from the office. If the proposed changes are major, the covered entity shall give public notice of the changes, make the changes available in draft form, and provide the public an opportunity to comment on such changes before adopting them in accordance with subsection (5) of this section.

(9)

(a) Neither the board nor the Colorado water resources and power development authority shall release grant or loan proceeds to a covered entity unless the covered entity provides a copy of the water conservation plan adopted pursuant to this section; except that the board or the authority may release the grant or loan proceeds notwithstanding a covered entity's failure to comply with the reporting requirements of subsection (4.5) of this section or if the board or the authority, as applicable, determines that an unforseen emergency exists in relation to the covered entity's loan application, in which case the board or the authority, as applicable, may impose a grant or loan surcharge upon the covered entity that may be rebated or reduced if the covered entity submits and adopts a plan in compliance with this section in a timely manner as determined by the board or the authority, as applicable.

(b) The board and the Colorado water resources and power development authority, to which any covered entity has applied for financial assistance for the construction of a water diversion, storage, conveyance, water treatment, or wastewater treatment facility, shall consider any water conservation plan filed pursuant to this section in determining whether to render financial assistance to such entity. Such consideration shall be carried out within the discretion accorded the board and the Colorado water resources and power development authority pursuant to which such board and authority render such financial assistance to such covered entity.

(c) The board and the Colorado water resources and power development authority may enter into a memorandum of understanding with each other for the purposes of avoiding delay in the processing of applications for financial assistance covered by this section and avoiding duplication in the consideration required by this subsection (9).

(10) Repealed.

(11)

(a) Any section of a restrictive covenant or of the declaration, bylaws, or rules and regulations of a common interest community, all as defined in *section 38-33.3-103, C.R.S.*, that prohibits or limits xeriscape, prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist wholly or partially of turf grass is hereby declared contrary to public policy and, on that basis, is unenforceable. This paragraph (a) does not prohibit common interest communities from adopting and enforcing design or aesthetic guidelines or rules that require drought-tolerant vegetative landscapes or regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on the unit owner's property or property for which the unit owner is responsible.

(b) As used in this subsection (11):

(I) "Executive board policy or practice" includes any additional procedural step or burden, financial or otherwise, placed on a unit owner who seeks approval for a landscaping change by the executive board of a unit owners' association, as defined in *section 38-33.3-103, C.R.S.*, and not included in the existing declaration or bylaws of the association. An "executive board policy or practice" includes, without limitation, the requirement of:

(A) An architect's stamp;

(B) Preapproval by an architect or landscape architect retained by the executive board;

(C) An analysis of water usage under the proposed new landscape plan or a history of water usage under the unit owner's existing landscape plan; and

(D) The adoption of a landscaping change fee.

(II) "Restrictive covenant" means any covenant, restriction, bylaw, executive board policy or practice, or condition applicable to real property for the purpose of controlling land use, but does not include any covenant, restriction, or condition imposed on such real property by any governmental entity.

(II.5) "Turf" means a covering of mowed vegetation, usually turf grass, growing intimately with an upper soil stratum of intermingled roots and stems.

(III) "Turf grass" means continuous plant coverage consisting of nonnative grasses or grasses that have not been hybridized for arid conditions which, when regularly mowed, form a dense growth of leaf blades and roots.

(IV) "Xeriscape" means the application of the principles of landscape planning and design, soil analysis and improvement, appropriate plant selection, limitation of turf area, use of mulches, irrigation efficiency, and appropriate maintenance that results in water use efficiency and water-saving practices.

(c) Nothing in this subsection (11) precludes the executive board of a common interest community from taking enforcement action against a unit owner who allows his or her existing landscaping to die or go dormant; except that:

(I) No enforcement action shall require that a unit owner water in violation of water use restrictions declared by the jurisdiction in which the common interest community is located, in which case the unit owner shall water his or her landscaping appropriately but not in excess of any watering restrictions imposed by the water provider for the common interest community;

(II) Enforcement shall be consistent within the community and not arbitrary or capricious; and

(III) In any enforcement action in which the existing turf grass is dead or dormant due to insufficient watering, the unit owner shall be allowed a reasonable and practical opportunity, as defined by the as-

sociation's executive board, with consideration of applicable local growing seasons or practical limitations, to reseed and revive turf grass before being required to replace it with new sod.

(d) This subsection (11) does not supersede any subdivision regulation of a county, city and county, or other municipality.

(12) (a) (I) There is hereby created the water efficiency grant program for purposes of providing state funding to aid in the planning and implementation of water conservation plans developed in accordance with the requirements of this section and to promote the benefits of water efficiency. The board is authorized to distribute grants to covered entities, other state or local governmental entities, and agencies in accordance with its guidelines from the moneys transferred to and appropriated from the water efficiency grant program cash fund, which is hereby created in the state treasury.

(II) Moneys in the water efficiency grant program cash fund are hereby continuously appropriated to the board for the purposes of this subsection (12) and shall be available for use until the programs and projects financed using the grants have been completed.

(III) For each fiscal year beginning on or after July 1, 2010, the general assembly shall appropriate from the fund to the board up to five hundred thousand dollars annually for the purpose of providing grants to covered entities, other state and local governmental entities, and agencies in accordance with this subsection (12). Commencing July 1, 2008, the general assembly shall also appropriate from the fund to the board fifty thousand dollars each fiscal year to cover the costs associated with the administration of the grant program and the requirements of *section 37-60-124*. Moneys appropriated pursuant to this subparagraph (III) shall remain available until expended or until June 30, 2020, whichever occurs first.

(IV) Any moneys remaining in the fund on June 30, 2020, shall be transferred to the severance tax operational fund described in *section 39-29-109 (2) (b), C.R.S.*

(b) Any covered entity or state or local governmental entity that has adopted a water conservation plan and that supplies, distributes, or otherwise provides water at retail to customers may apply for a grant to aid in the implementation of the water efficiency goals of the plan. Any agency may apply for a grant to fund outreach or education programs aimed at demonstrating the benefits of water efficiency. The office shall review the applications and make recommendations to the board regarding the awarding and distribution of grants to applicants who satisfy the criteria outlined in this subsection (12) and the guidelines developed pursuant to subsection (7) of this section.

(c) This subsection (12) is repealed, effective July 1, 2020.

History

Source:
L. 91: Entire section added, p. 2023, § 4, effective June 4.L. 99: (10) repealed, p. 25, § 3, effective March 5.L. 2003: (4)(g) amended and (11) added, p. 1368, § 4, effective April 25.L. 2004: Entire section amended, p. 1779, § 3, effective August 4.L. 2005: (11) amended, p. 1372, § 1, effective June 6; (1), (2)(b), and (7) amended and (12) added, p. 1481, § 1, effective June 7.L. 2007: (1)(a), (2)(a), (5), (7), and (12) amended, p. 1890, § 1, effective June 1.L. 2008: IP(4) amended, p. 1575, § 30, effective May 29; (12)(a) amended, p. 1873, § 14, effective June 2.L. 2009: (12)(a) amended, (HB 09-1017), ch. 297, p. 1593, § 1, effective May 21; (9)(a) amended, (SB 09-106), ch. 386, p. 2091, § 3, effective July 1.L. 2010: (4)(a)(I) and (9)(a) amended and (4.5) added, (HB 10-1051), ch. 378, p. 1772, § 1, effective June 7; (12)(a)(III), (12)(a)(IV), and (12)(c) amended, (SB 10-025), ch. 379, p. 1774, § 1, effective June 7.L. 2013: (11)(a), (11)(b)(III), IP(11)(c), (11)(c)(I), and (11)(c)(III) amended and (11)(b)(II.5) and (11)(d) added, (SB 13-183), ch. 187, p. 756, § 1, effective May 10; (6) and (12)(a)(IV) amended, (SB 13-181), ch. 209, p. 873, § 24, effective May 13.

Annotations

Notes

Editor's note: Subsection (12) was originally enacted as subsection (13) in House Bill 05-1254 but was renumbered on revision for ease of location.

Cross references: (1) In 1991, this entire section was added by the "Water Conservation Act of 1991". For the short title and the legislative declaration, see sections 1 and 2 of chapter 328, Session Laws of Colorado 1991.

(2) For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 373, Session Laws of Colorado 2004.

C.R.S. 39-1-102

This document reflects changes current through all laws passed at the First Regular Sessionof the Sixty-Ninth General Assembly of the State of Colorado (2013)

Colorado Revised Statutes > TITLE 39. > PROPERTY TAX > ARTICLE 1.GENERAL

39-1-102. Definitions

As used in articles 1 to 13 of this title, unless the context otherwise requires:

(1) "Administrator" means the property tax administrator.

(1.1) "Agricultural and livestock products" means plant or animal products in a raw or unprocessed state that are derived from the science and art of agriculture, regardless of the use of the product after its sale and regardless of the entity that purchases the product. "Agriculture", for the purposes of this subsection (1.1), means farming, ranching, animal husbandry, and horticulture. Effective July 1, 2013, "agriculture" includes silviculture.

(1.3) "Agricultural equipment which is used on the farm or ranch in the production of agricultural products" means any personal property used on a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, for planting, growing, and harvesting agricultural products or for raising or breeding livestock for the primary purpose of obtaining a monetary profit and includes any mechanical system used on the farm or ranch for the conveyance and storage of animal products in a raw or unprocessed state, regardless of whether or not such mechanical system is affixed to real property.

(1.6) (a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(I)

(A) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use. "Agricultural land" under this subparagraph (I) shall not include two acres or less of land on which a residential improvement is located unless the improvement is integral to an agricultural operation conducted on such land. "Agricultural land" also includes the land underlying other improvements if such improvements are an integral part of the farm or ranch and if such other improvements and the land area dedicated to such other improvements are typically used as an ancillary part of the operation. The use of a portion of such land for hunting, fishing, or other wildlife purposes, for monetary profit or otherwise, shall not affect the classification of agricultural land. For purposes of this subparagraph (I), a parcel of land shall be "in the process of being restored through conservation practices" if: The land has been placed in a conservation reserve program established by the natural resources conservation service pursuant to *7 U.S.C. secs. 1* to 5506; or a conservation plan approved by the appropriate conservation district has been implemented for the land for up to a period of ten crop years as if the land has been placed in such a conservation reserve program.

(B) A residential improvement shall be deemed to be "integral to an agricultural operation" for purposes of sub-subparagraph (A) of this subparagraph (I) if an individual occupying the residential improvement either regularly conducts, supervises, or administers material aspects of the agricultural operation or is the spouse or a parent, grandparent, sibling, or child of the individual.

(II) A parcel of land that consists of at least forty acres, that is forest land, that is used to produce tangible wood products that originate from the productivity of such land for the primary purpose of obtaining a monetary profit, that is subject to a forest management plan, and that is not a farm or ranch, as defined in subsections (3.5) and (13.5) of this section. "Agricultural land" under this subparagraph (II) includes land underlying any residential improvement located on such agricultural land.

(III) A parcel of land that consists of at least eighty acres, or of less than eighty acres if such parcel does not contain any residential improvements, and that is subject to a perpetual conservation easement, if such land was classified by the assessor as agricultural land under subparagraph (I) or (II) of this paragraph (a) at the time such easement was granted, if the grant of the easement was to a qualified organization, if the easement was granted exclusively for conservation purposes, and if all current and contemplated future uses of the land are described in the conservation easement. "Agricultural land" under this subparagraph (III) does not include any portion of such land that is actually used for nonagricultural commercial or nonagricultural residential purposes.

(IV) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, if the owner of the land has a decreed right to appropriated water granted in accordance with article 92 of title 37, C.R.S., or a final permit to appropriated groundwater granted in accordance with article 90 of title 37, C.R.S., for purposes other than residential purposes, and water appropriated under such right or permit shall be and is used for the production of agricultural or livestock products on such land;

(V) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that has been reclassified from agricultural land to a classification other than agricultural land and that met the definition of agricultural land as set forth in subparagraphs (I) to (IV) of this paragraph (a) during the three years before the year of assessment. For purposes of this subparagraph (V), the parcel of land need not have been classified or eligible for classification as agricultural land during the ten years preceding the year of assessment as required by subparagraph (I) of this paragraph (a).

(b) All other agricultural property that does not meet the definition set forth in paragraph (a) of this subsection (1.6) shall be classified as all other property and shall be valued using appropriate consideration of the three approaches to appraisal based on its actual use on the assessment date.

(c) An assessor must determine, based on sufficient evidence, that a parcel of land does not qualify as agricultural land, as defined in subparagraph (IV) of paragraph (a) of this subsection (1.6), before land may be changed from agricultural land to any other classification.

(d) Notwithstanding any other provision of law to the contrary, property that is used solely for the cultivation of medical marijuana shall not be classified as agricultural land.

(2) "Assessor" means the elected assessor of a county, or his or her appointed successor, and, in the case of the city and county of Denver, such equivalent officer as may be provided by its charter, and, in the case of the city and county of Broomfield, such equivalent officer as may be provided by its charter or code.

(2.5) "Bed and breakfast" means an overnight lodging establishment, whether owned by a natural person or any legal entity, that is a residential dwelling unit or an appurtenance thereto, in which the innkeeper resides, or that is a building designed but not necessarily occupied as a single family residence that is next to, or directly across the street from, the innkeeper's residence, and in either circumstance, in which:

(a) Lodging accommodations are provided for a fee;

(b) At least one meal per day is provided at no charge other than the fee for the lodging accommodations; and

(c) There are not more than thirteen sleeping rooms available for transient guests.

(3) "Board" means the board of assessment appeals.

(3.1) "Commercial lodging area" means a guest room or a private or shared bathroom within a bed and breakfast that is offered for the exclusive use of paying guests on a nightly or weekly basis. Classification of a guest room or a bathroom as a "commercial lodging area" shall be based on whether at any time during a year such rooms are offered by an innkeeper as nightly or weekly lodging to guests for a fee. Classification shall not be based on the number of days that such rooms are actually occupied by paying guests.

(3.2) "Conservation purpose" means any of the following purposes as set forth in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended:

(a) The preservation of land areas for outdoor recreation, the education of the public, or the protection of a relatively natural habitat for fish, wildlife, plants, or similar ecosystems; or

(b) The preservation of open space, including farmland and forest land, where such preservation is for the scenic enjoyment of the public or is pursuant to a clearly delineated federal, state, or local government conservation policy and where such preservation will yield a significant public benefit.

(3.5) "Farm" means a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit.

(4) "Fixtures" means those articles which, although once movable chattels, have become an accessory to and a part of real property by having been physically incorporated therein or annexed or affixed thereto. "Fixtures" includes systems for the heating, air conditioning, ventilation, sanitation, lighting, and plumbing of such building. "Fixtures" does not include machinery, equipment, or other articles related to a commercial or industrial operation which are affixed to the real property for proper utilization of such articles. In addition, for property tax purposes only, "fixtures" does not include security devices and systems affixed to any residential improvements, including but not limited to security doors, security bars, and alarm systems.

(4.3) "Forest land" means land of which at least ten percent is stocked by forest trees of any size and includes land that formerly had such tree cover and that will be naturally or artificially regenerated. "Forest land" includes roadside, streamside, and shelterbelt strips of timber which have a crown width of at least one hundred twenty feet. "Forest land" includes unimproved roads and trails, streams, and clearings which are less than one hundred twenty feet wide.

(4.4) "Forest management plan" means an agreement which includes a plan to aid the owner of forest land in increasing the health, vigor, and beauty of such forest land through use of forest management practices and which has been either executed between the owner of forest land and the Colorado state forest service or executed between the owner of forest land and a professional forester and has been reviewed and has received a favorable recommendation from the Colorado state forest service. The Colorado forest service shall annually inspect each parcel of land subject to a forest management plan to determine if the terms and conditions of such plan are being complied with and shall report by March 1 of each year to the assessor in each affected county the legal descriptions of the properties and the names of their owners that are eligible for the agricultural classification. The report shall also contain the legal descriptions of those properties and the names of their owners that no longer qualify for the agricultural classification because of noncompliance with their forest management plans. No property shall be entitled to the agricultural classification unless the legal description and the name of the owner appear on the report submitted by the Colorado state forest service. The Colorado state forest service shall charge a fee for the inspection of each parcel of land in such amount for the reasonable costs incurred by the Colorado state forest service in conducting such inspections. Such fee shall be paid by the owner of such land prior to such inspection. Any fees collected pursuant to this subsection (4.4) shall be subject to annual appropriation by the general assembly.

(4.5) "Forest management practices" means practices accepted by professional foresters which control forest establishment, composition, density, and growth for the purpose of producing forest products and associated amenities following sound business methods and technical forestry principles.

(4.6) "Forest trees" means woody plants which have a well-developed stem or stems, which are usually more than twelve feet in height at maturity, and which have a generally well-defined crown.

(5) Repealed.

(5.5) (a) "Hotels and motels" means improvements and the land associated with such improvements that are used by a business establishment primarily to provide lodging, camping, or personal care or health facilities to the general public and that are predominantly used on an overnight or weekly basis; except that "hotels and motels" does not include:

(I) A residential unit, except for a residential unit that is a hotel unit;

(II) A residential unit that would otherwise be classified as a hotel unit if the residential unit is held as inventory by a developer primarily for sale to customers in the ordinary course of the developer's trade or business, is marketed for sale by the developer, and either has been held by the developer for less than two years since the certificate of occupancy for the residential unit has been issued

or is not depreciated under the internal revenue code, as defined in *section 39-22-103 (5.3)*, while owned by the developer; or

(III) A residential unit that would otherwise be classified as a hotel unit if the residential unit has been acquired by a lender or an owners' association through foreclosure, a deed in lieu of foreclosure, or a similar transaction, is marketed for sale by the lender or owners' association and is not depreciated under the internal revenue code, as defined in *section 39-22-103 (5.3)*, while owned by the lender or owners' association.

(IV) Repealed.

(b) If any time share estate, time share use period, undivided interest, or other partial ownership interest in any hotel unit is owned by any non-hotel unit owner, then, unless a declaration or other express agreement binding on the non-hotel unit owners and the hotel unit owners provides otherwise:

(I) The hotel unit owners shall pay the taxes on the hotel unit not required to be paid by the non -hotel unit owners pursuant to subparagraph (II) of this paragraph (b).

(II) Each non-hotel unit owner shall pay that portion of the taxes on the hotel unit equal to the non-hotel unit owner's ownership or usage percentage of the hotel unit multiplied by the property tax that would have been levied on the hotel unit if the actual value and valuation for assessment of the hotel unit had been determined as if the hotel unit was residential real property.

(III) For purposes of determining the amount due from any hotel unit owner or non-hotel unit owner pursuant to subparagraph (II) of this paragraph (b), the assessor shall, upon the request of any hotel unit owner or non-hotel unit owner, calculate the property tax that would have been levied on the hotel unit if the actual value and valuation for assessment of the hotel unit had been determined as if the hotel unit were residential real property. A hotel unit owner or non-hotel unit owner may petition the county board of equalization for review of the assessor's calculation pursuant to the procedures set forth in *section 39-10-114*. Any appeal from the decision of the county board shall be governed by *section 39-10-114.5*.

(c) As used in this subsection (5.5):

(I) "Condominium unit" means a unit, as defined in *section 38-33.3-103 (30), C.R.S.*, and also includes a time share unit.

(II) "Hotel unit owners" means any person or member of a group of related persons whose ownership and use of a residential unit cause the residential unit to be classified as a hotel unit.

(III) "Hotel units" means more than four residential unit ownership equivalents in a project that are owned, in whole or in part, directly, or indirectly through one or more intermediate entities, by one person or by a group of related persons if the person or group of related persons uses the residential units or parts thereof in connection with a business establishment primarily to provide lodging, camping, or personal care or health facilities to the general public predominantly on an overnight or weekly basis. "Hotel unit" means any residential unit included in hotel units. For purposes of this subparagraph (III):

(A) "Control" means the power to direct the business or affairs of an entity through direct or indirect ownership of stock, partnership interests, membership interests, or other forms of beneficial interests.

(B) "Related persons" means individuals who are members of the same family, including only spouses and minor children, or persons who control, are controlled by, or are under common control with each other. Persons are not related persons solely because they engage a common agent to manage or rent their residential units, they are members of an owners' association or similar group, they enter into a tenancy in common or a similar agreement with respect to undivided interests in a residential unit, or any combination of the foregoing.

(IV) "Project" means one or more improvements that contain residential units if the boundaries of the residential units are described in or determined by the same declaration, as defined in *section 38-33.3-103 (13), C.R.S.*

(V) "Residential unit" means a condominium unit, a single family residence, or a townhome.

(VI) "Non-hotel unit owner" means any owner of a time share estate, time share use period, undivided interest, or other partial ownership interest in any hotel unit who is not a hotel unit owner with respect to the hotel unit.

(VII) "Residential unit ownership equivalent" means:

(A) In the case of time share units, time share interests or time share use periods in one or more time share units that in the aggregate entitle the owner of such time share interests or time share use periods to three hundred sixty-five days of use in any calendar year or three hundred sixty-six days of use in any calendar year that is a leap year; and

(B) In the case of residential units other than time share units, undivided interests or other ownership interests in one or more such residential units that total one hundred percent. For purposes of this sub-subparagraph (B), any undivided interest or other ownership interest not stated in terms of a percentage of total ownership shall be converted to a percentage of total ownership based on the rights accorded to the holder of the undivided interest or other ownership interest.

(VIII) "Time share unit" means a condominium unit that is divided into time share estates as defined in *section 38-33-110 (5), C.R.S.*, or that is subject to a time share use as defined in *section 12-61-401 (4), C.R.S.*

(5.6) "Hotels and motels" as defined in subsection (5.5) of this section shall not include bed and breakfasts.

(6) "Household furnishings" means that personal property, other than fixtures, in residential structures and buildings which is not used for the production of income at any time.

(6.3) "Improvements" means all structures, buildings, fixtures, fences, and water rights erected upon or affixed to land, whether or not title to such land has been acquired.

(6.8) "Independently owned residential solar electric generation facility" means personal property that:

(a) Is located on residential real property;

(b) Is owned by a person other than the owner of the residential real property;

(c) Is installed on the customer's side of the meter;

(d) Is used to produce electricity from solar energy primarily for use in the residential improvements located on the residential real property; and

(e) Has a production capacity of no more than one hundred kilowatts.

(7) (Deleted by amendment, L. 2010, (HB 10-1267), ch. 425, p. 2198, § 1, effective August 11, 2010.)

(7.1) "Innkeeper" means the owner, operator, or manager of a bed and breakfast.

(7.2) "Inventories of merchandise and materials and supplies which are held for consumption by a business or are held primarily for sale" means those classes of personal property which are held primarily for sale by a business, farm, or ranch, including components of personal property to be held for sale, or which are held for consumption by a business, farm, or ranch, or which are rented for thirty days or less. For the purposes of this subsection (7.2), "personal property rented for thirty days or less" means personal property rented for thirty days or less which can be returned at the option of the person renting the property, in a transaction on which the sales or use tax is actually collected before being finally sold, whether or not such personal property is subject to depreciation. It is the purpose of the general assembly to exempt "personal property rented for thirty days or less" from property tax because of the similarity of such property to inventories of merchandise held by retail stores. Further, the general assembly intends this exemption to encompass a transaction under a rental agreement in which the customer pays rent in or-

der to use an item for a brief period of time; it is not intended to encompass an equipment lease contract covering a specific period of time and which includes financial penalties for early cancellation. Except for "personal property rented for thirty days or less", the term "inventories of merchandise and materials and supplies which are held for consumption by a business or are held primarily for sale" does not include personal property which is held for rent or lease or is subject to an allowance for depreciation. For property tax years commencing on or after January 1, 1984, the term does include inventory which is owned by and which is in the possession of the manufacturer of such inventory unless:

(a) Such inventory is in the possession of the manufacturer after having previously been leased by the manufacturer to a customer; and

(b) Such manufacturer has not designated such inventory for scrapping, substantial reconditioning, renovating, or remanufacturing in accordance with its customary practices. For the purposes of this paragraph (b), normal maintenance shall not constitute substantial reconditioning, renovating, or remanufacturing.

(7.5) Repealed.

(7.7) "Livestock" includes all animals.

(7.8) "Manufactured home" means any preconstructed building unit or combination of preconstructed building units that:

(a) Includes electrical, mechanical, or plumbing services that are fabricated, formed, or assembled at a location other than the residential site of the completed home;

(b) Is designed and used for residential occupancy in either temporary or permanent locations;

(c) Is constructed in compliance with the "National Manufactured Housing Construction and Safety Standards Act of 1974", *42 U.S.C. sec. 5401* et seq., as amended;

(d) Does not have motive power;

(e) Is not licensed as a vehicle; and

(f) Is eligible for a certificate of title pursuant to part 1 of article 29 of title 38, C.R.S.

(7.9) "Minerals in place" means, without exception, metallic and nonmetallic mineral substances of every kind while in the ground.

(8) "Mobile home" means a manufactured home built prior to the adoption of the "National Manufactured Housing Construction and Safety Standards Act of 1974", *42 U.S.C. sec. 5401* et seq., as amended.

(8.3) "Modular home" means any preconstructed factory-built building that:

(a) Is ineligible for a certificate of title pursuant to part 1 of article 29 of title 38, C.R.S.;

(b) Is not constructed in compliance with the "National Manufactured Housing Construction and Safety Standards Act of 1974", *42 U.S.C. sec. 5401* et seq., as amended; and

(c) Is constructed in compliance with building codes adopted by the division of housing in the department of local affairs.

(8.4) "Natural cause" means fire, explosion, flood, tornado, action of the elements, act of war or terror, or similar cause beyond the control of and not caused by the party holding title to the property destroyed.

(8.5) "Not for private gain or corporate profit" means the ownership and use of property whereby no person with any connection to the owner thereof shall receive any pecuniary benefit except for reasonable compensation for services rendered and any excess income over expenses derived from the operation or use of the property and all proceeds from the sale of the property of the owner shall be devoted to the furthering of any exempt purpose. Property ownership shall be deemed to have met the requirements of this subsection (8.5) if:

(a) The property is owned by a nonprofit corporation or association whose property is irrevocably dedicated to charitable, religious, or school purposes and no portion of its assets will inure to the benefit of any private person upon the liquidation, dissolution, or abandonment of such corporation or association; or

(b) (I) The operator of the property is a nonprofit entity that would otherwise qualify for property tax exemption under article 3 of this title and is a general partner or member of the owner, and the property is owned by:

(A) An entity organized for the purpose of obtaining tax credits through the new markets tax credit program under *26 U.S.C. sec. 45* D of the federal "Internal Revenue Code of 1986", as amended, or the rehabilitation tax credit program under *26 U.S.C. sec. 47* of the federal "Internal Revenue Code of 1986", as amended, and is eligible for credits; and

(B) An entity that makes payments in lieu of property taxes pursuant to *section 39-3-114.5*.

(II) The provisions of this paragraph (b) shall apply to applications for exemption filed on or after January 1, 2009, or that are pending on that date.

(8.7) "Perpetual conservation easement" means a conservation easement in gross, as described in article 30.5 of title 38, C.R.S., that qualifies as a perpetual conservation restriction pursuant to section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any regulations issued thereunder.

(9) "Person" means natural persons, corporations, partnerships, limited liability companies, associations, and other legal entities which are or may become taxpayers by reason of the ownership of taxable real or personal property.

(10) "Personal effects" means such personal property as is or may be worn or carried on or about the person, and such personal property as is usually associated with the person or customarily used in personal hobby, sporting, or recreational activities and which is not used for the production of income at any time.

(11) "Personal property" means everything that is the subject of ownership and that is not included within the term "real property". "Personal property" includes machinery, equipment, and other articles related to a commercial or industrial operation that are either affixed or not affixed to the real property for proper utilization of such articles. Except as otherwise specified in articles 1 to 13 of this title, any pipeline, telecommunications line, utility line, cable television line, or other similar business asset or article installed through an easement, right-of-way, or leasehold for the purpose of commercial or industrial operation and not for the enhancement of real property shall be deemed to be personal property, including, without limitation, oil and gas distribution and transmission pipelines, gathering system pipelines, flow lines, process lines, and related water pipeline collection, transportation, and distribution systems. Structures and other buildings installed on an easement, right-of-way, or leasehold that are not specifically referenced in this subsection (11) shall be deemed to be improvements pursuant to subsection (6.3) of this section.

(12) "Political subdivision" means any entity of government authorized by law to impose ad valorem taxes on taxable property located within its territorial limits.

(12.1) Repealed.

(12.3) and (12.4) Repealed.

(12.5) "Professional forester" means any person who has received a bachelor's or higher degree from an accredited school of forestry.

(13) "Property" means both real and personal property.

(13.2) "Qualified organization" means a qualified organization as defined in section 170 (h) (3) of the federal "Internal Revenue Code of 1986", as amended.

(13.5) "Ranch" means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), "livestock" means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.

(14) "Real property" means:

(a) All lands or interests in lands to which title or the right of title has been acquired from the government of the United States or from sovereign authority ratified by treaties entered into by the United States, or from the state;

(b) All mines, quarries, and minerals in and under the land, and all rights and privileges thereunto appertaining; and

(c) Improvements.

(14.3) "Residential improvements" means a building, or that portion of a building, designed for use predominantly as a place of residency by a person, a family, or families. The term includes buildings, structures, fixtures, fences, amenities, and water rights that are an integral part of the residential use. The term also includes a manufactured home as defined in subsection (7.8) of this section, a mobile home as defined in subsection (8) of this section, and a modular home as defined in subsection (8.3) of this section.

(14.4)

(a) "Residential land" means a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon. The term includes parcels of land in a residential subdivision, the exclusive use of which land is established by the ownership of such residential improvements. The term includes land upon which residential improvements were destroyed by natural cause after the date of the last assessment as established in *section 39-1-104 (10.2)*. The term also includes two acres or less of land on which a residential improvement is located where the improvement is not integral to an agricultural operation conducted on such land. The term does not include any portion of the land that is used for any purpose that would cause the land to be otherwise classified, except as provided for in *section 39-1-103 (10.5)*.

(b)

(I) Notwithstanding *section 39-1-103 (5) (c)* and except as provided in subparagraph (II) of this paragraph (b), when residential improvements are destroyed, demolished, or relocated as a result of a natural cause on or after January 1, 2010, that, were it not for their destruction, demolition, or relocation due to such natural cause, would have qualified the land upon which the improvements were located as residential land for the following property tax year, the residential land classification shall remain in place for the year of destruction, demolition, or relocation and the two subsequent property tax years. The residential land classification may remain in place for additional subsequent property tax years, not to exceed a total of five subsequent property tax years, if the assessor determines there is evidence the owner intends to rebuild or locate a residential improvement on the land. For purposes of this determination, the assessor may consider, but shall not be limited to considering, a building permit or other land development permit for the land, construction plans for such residential improvement, efforts by the owner to obtain financing for a residential improvement, or ongoing efforts to settle an insurance claim related to the destruction, demolition, or relocation of the residential improvement due to a natural cause.

(II) The residential land classification of the land described in subparagraph (I) of this paragraph (b) shall change according to current use if:

(A) A new residential improvement or part of a new residential improvement is not constructed or placed on the land in accordance with applicable land use regulations prior to the January 1 after the period described in subparagraph (I) of this paragraph (b);

(B) The assessor determines that the classification at the time of destruction, demolition, or relocation as a result of a natural cause was erroneous; or

(C) A change of use has occurred. For purposes of this sub-subparagraph (C), a change of use shall not include the temporary loss of the residential use due to the destruction, demolition, or relocation as a result of a natural cause of the residential improvement.

(14.5) "Residential real property" means residential land and residential improvements but does not include hotels and motels as defined in subsection (5.5) of this section.

(15) Repealed.

(15.5) (a) "School" means:

(I) An educational institution having a curriculum comparable to that of a publicly supported elementary or secondary school or college, or any combination thereof, and requiring daily attendance; or

(II) An institution that is licensed as a child care center pursuant to article 6 of title 26, C.R.S., that is:

(A) Operated by and as an integral part of a not-for-profit educational institution that meets the requirements of subparagraph (I) of this paragraph (a); or

(B) A not-for-profit institution that offers an educational program for not more than six hours per day and that employs educators trained in preschool through eighth grade educational instruction and is licensed by the appropriate state agency and that is not otherwise qualified as a school under this paragraph (a) or as a religious institution.

(b) "School" includes any educational institution that meets the requirements set forth in subparagraph (I) or (II) of paragraph (a) of this subsection (15.5), even if such educational institution maintains hours of operation in excess of the minimum hour requirements of *section 22-32-109 (1) (n) (I), C.R.S.*

(16) "Taxable property" means all property, real and personal, not expressly exempted from taxation by law.

(17) "Treasurer" means the elected treasurer of a county or his or her appointed successor, and, in the case of the city and county of Denver, such equivalent officer as may be provided by its charter, and, in the case of the city and county of Broomfield, such equivalent officer as may be provided by its charter or code.

(18) "Works of art" means those items of personal property that are original creations of visual art, including, but not limited to:

(a) Sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic;

(b) Paintings or drawings;

(c) Mosaics;

(d) Photographs;

(e) Crafts made from clay, fiber and textiles, wood, metal, plastics, or any other material, or any combination thereof;

(f) Calligraphy;

(g) Mixed media composed of any combination of forms or media; or

(h) Unique architectural embellishments.

History

Source:
L. 64: R&RE, p. 674, § 1. C.R.S. 1963: § 137-1-1.L. 65: p. 1095, § 1.L. 67: p. 945, § 1.L. 70: p. 379, § 8.L. 73: p. 237, § 17.L. 75: (8) repealed, p. 1473, § 30, effective July 18.L. 77: (7.5), (12.3), and (12.4) added, p. 1728, § 1, effective June 20; (8) RC&RE, p. 1740, § 1, effective January 1, 1978. L. 78: (12.1) added, p. 467, § 1, effective July 1. L. 79: (12.1) amended, p. 1400, § 1, effective March 13; (12.1)(a) amended, p. 1059, § 9, effective June 20; (12.1) repealed, p. 1456, § 4, effective July 1, 1981.L. 80: (18) added, p. 711, § 1, effective April 16.L. 81: (12.1)(d) R&RE, p. 1872, § 4, effective June 29; (12.1)(a)(II) amended, § 5, effective July 1.L. 83: (15) repealed, p. 1485, § 11, effective April 22; (1.1), (1.3), (1.6), (3.5), (5.5), (7.2), (7.8), (13.5), and (14.3) to (14.5) added, (5) repealed, and (12.3)(b) amended, pp. 1486, 1488, § § 1, 6, 4, effective June 1.L. 84: (7.2) amended, p. 983, § 1, effective May 8.L. 85: IP(7.2) amended and (7.9) added, pp. 1215, 1210, § § 1, 2, effective May 9.L. 87: (1.3) amended, p. 1382, § 1, effective May 8; (7.5), (12.3), and (12.4) repealed, p. 1304, § 1, effective May 20.L. 88: (4) and (11) amended and (12.1) repealed, pp. 1269, 1275, § § 4, 14, effective May 29.L. 89: (15.5) added, p. 1482, § 3, effective April 23.L. 90: (1.6)(a) amended, (4.3) to (4.6) and (12.5) added, p. 1706, § 1, effective April 16; (9) amended, p. 450, § 26, effective April 18; (1.6)(a) and (13.5) amended and (8.5) added, pp. 1695, 1703, 1701, § § 16, 37, 33, effective

June 9.L. 91: IP(7.2) amended, p. 1980, § 1, effective April 20; (8) amended, p. 1394, § 2, effective April 27.L. 92: (4) amended, p. 2216, § 3, effective June 2.L. 94: (8) and (14.3) amended, p. 2568, § 86, effective January 1, 1995.L. 95: IP(1.6)(a) amended and (1.6)(a)(III), (3.2), (8.7), and (13.2) added, pp. 173, 174, § § 1, 2, effective April 7.L. 97: (1.1) and (1.6) amended, p. 509, § 1, effective April 24.L. 98: (11) amended, p. 1276, § 1, effective June 1.L. 99: (15.5) amended, p. 1299, § 1, effective June 3.L. 2000: (15.5)(a)(II) amended, p. 1499, § 1, effective August 2.L. 2001: (2) and (17) amended, p. 268, § 14, effective November 15.L. 2002: (5.5) amended, p. 1939, § 1, effective August 7; (2.5), (3.1), (5.6), and (7.1) added, (5.5)(a)(IV) repealed, and (14.4) amended, pp. 1671, 1673, § § 1, 3, effective January 1, 2003.L. 2004: (1.6)(a)(I) amended, p. 1208, § 86, effective August 4.L. 2008: (14.3) amended, p. 1914, § 129, effective August 5.L. 2009: (7.7) and (8.3) added and (7.8), (8), and (14.3) amended, (SB-040), ch. 9, p. 70, § 12, effective July 1; (8.5) amended, (SB 09-042), ch. 176, p. 779, § 1, effective August 5.L. 2010: (1.1) amended, (SB 10-177), ch. 392, p. 1861, § 1, effective August 11; (1.6)(a)(III) amended, (HB 10-1197), ch. 175, p. 634, § 1, effective August 11; (6.3) and (6.8) added and (7) and (11) amended, (HB10-1267), ch. 425, p. 2198, § 1, effective August 11.L. 2011: (8.4) added and (14.4) amended, (HB 11-1042), ch. 138, p. 479, § 1, effective May 4; (1.6)(d) added, (HB 11-1043), ch. 266, p. 1213, § 23, effective July 1; (1.6)(a)(I) and (14.4) amended, *(HB 11-1146), ch. 166, p. 571, § 1, effective January 1, 2012.L. 2013: (14.4)(a) amended, (HB 13-1300), ch. 316, p. 1699, § 116, effective August 7.*

Annotations

Notes

Editor's note: (1) Amendments to subsection (1.6)(a) by House Bill 90-1229 harmonized with House Bill 90-1018.

(2) Amendments to subsection (14.4) by House Bill 11-1042 and House Bill 11-1146 were harmonized, effective January 1, 2012.

Cross references: For the creation of the property tax administrator, see § 39-2-101.

Case Notes

ANNOTATION

I. PERSONAL PROPERTY.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Membership or contract in Associated Press is "personal property". *Bd. of Comm'rs v. Rocky Mt. News Printing Co., 15 Colo. App. 189, 61 P. 494 (1900).*

Signs that can easily be removed and kitchen and bath displays of a temporary nature are not fixtures and are therefore personal property. Also, despite being affixed to or permanently incorporated into a building, pneumatic and sensormatic systems were primarily tied to a business and therefore were not fixtures and were properly classified as personal property. *Home Depot USA, Inc. v. Pueblo County Bd. of Comm'rs, 50 P.3d 916 (Colo. App. 2002).*

II. PROPERTY.

Bank deposits not "property" of bank but are credits belonging to depositors. *Murray v. Bd. of Comm'rs, 67 Colo. 14, 185 P. 262 (1919).*

III. REAL PROPERTY.

To determine the proper classification of land for assessment, the trial court must make findings of fact regarding conflicting evidence. *C.A. Staack v. Bd. of County Comm'rs, 802 P.2d 1191 (Colo. App. 1990).*

Primary factor to be considered in determining proper classification of property for property tax purposes is the actual use of the property on the relevant assessment date. *Farny v. Bd. of Equaliz., 985 P.2d 106 (Colo. App. 1999).*