

THE HOA INFORMATION AND RESOURCE CENTER



COLORADO
Department of
Regulatory Agencies
Division of Real Estate

Disclaimer

- **Note: The Information provided during this presentation is for educational purposes only and is not meant to provide or to be construed as legal advice. Any legal questions should be directed to your attorney.**



WHAT IS DORA?



COLORADO

Department of
Regulatory Agencies

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“DORA is dedicated to preserving the integrity of the marketplace and is committed to promoting a fair and competitive business environment in Colorado. Consumer Protection is our mission.”

CCIOA

(Colorado Common Interest Ownership Act)

- C.R.S. § 38-33.3-101 to § 38-33.3-402
- Effective July 1, 1992.
- General Rule – if the payment of assessments is mandatory, CCIOA applies.
Other associations, including commercial common interest associations, may elect to be governed by CCIOA.
- CIC's created on/after the effective date are dealt with comprehensively as to their creation, development and management.
- CIC's created prior to the effective date are only subject to limited provisions.



CCIOA

- **C.R.S. § 38-33.3-103(8) – “Common interest community” means real estate described in a declaration with respect to which a person, by virtue of such person’s ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration.**



Senate Bills 100 (2005) and 89 (Clean-up) (2006) (incorporated into CCIOA)

- **Increased Protections for Homeowners (SB-100) (Incorporates into existing CCIOA statutes)**
 - **Included HOA prohibitions from barring:**
 - **American Flag, Political Signs, Military Svc Flags.**
 - **Parking Emergency Vehicles for Responders.**
 - **Xeriscaping (or requiring turf grass).**
 - **Removing of trees, etc. to create defensible fire mitigation space.**
 - **Replacement of cedar or other flammable roof materials with non-flammable roofs.**



Recent Legislation (incorporated into CCIOA)

- **HB12-1237: CIC Record-Keeping**
- **HB13-1134: HOA Information and Resource Center & Registration**
- **HB13-1276: HOA Debt Collection Limitations**
- **HB13-1277: Regulation License CIC Managers**
- **SB13-126: HOA Condo/Apt Electric Vehicle Charging Stations**
- **SB13-183: CIC Water Conservation**
- **SB13-182: Timeshare Resales**
- **HB14-1125: HOA Membership Directory Publication**
- **HB14-1254: Disclosure of Fees Charged to an HOA by a Community Association Manager**



Areas of Concern for Homeowners

- **§ 38-33.3-209.5, C.R.S.** – requiring associations to adopt responsible governance policies.
- **§ 38-33.3-209.5, C.R.S.** – requiring associations to provide due process requirements.
- **§ 38-33.3-217, C.R.S.** – requiring the association to receive an affirmative vote or agreement of 50% to 67% of unit owners' prior to amending the declaration of covenants.
- **§ 38-33.3-303, C.R.S.** – requiring the association to mail a copy of a proposed budget to the homeowners and set a date for a meeting of the unit owners to consider the budget.
- **§ 38-33.3-303, C.R.S.** – requiring a declarant to terminate control of the association when certain criteria are met.



Areas of Concern for Homeowners

- **§ 38-33.3-307, C.R.S.** – providing that the association is responsible for the maintenance, repair, and replacement of the common elements.
- **§ 38-33.3-308, C.R.S.** – requiring an association to hold a special meeting upon request of unit owners having twenty percent, or any lower percentage specified in the bylaws.
- **§ 38-33.3-308, C.R.S.** – requiring that association board meetings be open to the members.
- **§ 38-33.3-308, C.R.S.** – permitting members of the association an appropriate time to speak on an issue under discussion prior to a board vote.
- **§ 38-33.3-308, C.R.S.** – requiring the association board of directors to limit their discussions in executive sessions to specific enumerated topics.
- **§ 38-33.3-310, C.R.S.** – requiring that votes for positions on the executive board be taken by secret ballot and that the ballot be counted by a neutral third party or by a committee of volunteers.

Areas of Concern for Homeowners

- **§ 38-33.3-310.5, C.R.S.** – conflicts of interest, and also refers to **§ 7-128-501, C.R.S.**, of the Colorado Revised Non-Profit Act.
- **§ 38-33.3-317, C.R.S.** – requiring the association to keep and maintain certain records and to make those records available for examination and copying by a unit owner; that some records may be withheld from inspection and copying; that some records are not subject to inspection and copying; the use of membership lists; and the costs allowed for the production and reproduction of the records.

Governance Policies

§ 38-33.3-209.5

- 1. Collection of unpaid assessments.**
- 2. Handling conflicts of interest of board members.**
- 3. Conduct of meetings.**
- 4. Enforcement of covenants and rules, including notice and hearing procedures, and the schedule of fines.**
- 5. Owner right to inspect and copy records.**
- 6. Investment of reserve funds.**
- 7. Procedures for adoption and amendment of policies, procedures and rules.**
- 8. Dispute resolution.**
- 9. Reserve study.**

Meetings

§ 38-33.3-308

- Meetings are open.
- Members have the right to speak.
- The board can regulate the amount of time to speak.
- A reasonable number of persons must be allowed to speak on each side of an issue.

Executive Board Sessions

§ 38-33.3-308

- **Matters pertaining to employees or manager's contract or involving employment, promotion, discipline or dismissal of an officer, agent or employee.**
- **Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client.**
- **Investigative proceedings concerning possible or actual criminal misconduct.**
- **Matters subject to specific constitutional, statutory or judicially imposed requirements that protect proceedings from public disclosure.**
- **Any matter, the disclosure of which would constitute an unwarranted invasion of individual privacy.**
- **Review of or discussion relating to any written or oral communication from legal counsel.**

Procedure:

- **Before going into executive session, must announce the general matter of discussion.**
- **May not adopt any rule or regulation during executive session.**
- **Minutes of meeting must indicate that executive session was held and the general subject matter.**

Voting and Proxies

§ 38-33.3-310

- **Votes for contested positions on the board are by secret ballot.**
- **Ballots shall be counted by a neutral 3rd party or by a committee of volunteers.**
- **Results of the vote taken by secret ballot shall be reported without reference to the names, addresses, or other identifying information of unit owners participating in such vote.**
- **Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner.**
- **Unless otherwise provided for in the governing documents, appointment of proxies may be made substantially as provided in § 7-127-203, C.R.S. (Colorado Non-Profit Act).**

Conflicts of Interest

§ 38-33.3-310.5

- **Applies to executive boards and officers, and any person to whom the board delegates responsibilities under this article, including, without limitation, a managing agent, attorney, or accountant employed by the board.**
- **§ 7-128-501, C.R.S. (Colorado Non-Profit Act) applies to this provision.**

Who Must Register

- **§ 38-33.3-401(1) C.R.S.**
- **(revised by HB13-1134 (2013) to include pre-CCIOA communities.) (Pre - July 1, 1992)**
- **Requires that “every unit owner’s association shall register annually with the Director of the Division of Real Estate.”**
- **The statute mandates HOAs to complete an initial registration and renew their registration on an annual basis, as well as updating any relevant information within ninety days of any change.**
- **Renewals are done on an annual basis.**

HOA REGISTRATION AND THE FAILURE TO REGISTER

- § 38-33.3-401(3), C.R.S., provides that “the right of an association that fails to register, or whose annual registration has expired, to impose or enforce a lien for assessments under section 38-33.3-316 or to pursue an action or employ an enforcement mechanism otherwise available to it under section 38-33.3-123 is suspended until the association is validly registered...”

“A lien for assessments previously recorded during a period in which the association was validly registered or before registration was required.....is not extinguished by a lapse in the association’s registration, but a pending enforcement proceeding related to the lien is suspended, and an applicable time limit is tolled, until the association is validly registered...”

“AN ASSOCIATION’S REGISTRATION IN COMPLIANCE WITH THIS SECTION REVIVES A PREVIOUSLY SUSPENDED RIGHT WITHOUT PENALTY TO THE ASSOCIATION.”

New Records Law

HB12-1237

- HB12-1237, codified at § 38-33.3-317, C.R.S.
- **Effective January 1, 2013.**
- This new HOA records law addresses the following:
- Records which must be maintained and produced;
- Records which may be withheld from production;
- Records which must be withheld from production;
- The elimination of a requirement that owners must state a “proper purpose” to access records;
- The use of membership lists;
- The procedures for requesting HOA records; and
- The charges for assembling, producing, and copying the records.

Community Association Managers (CAM)

- HB13-1277 (2013): Codified in § § 12-61-1001, et seq., 38-33.3-209.4; and 38-33.3-402.
- **Effective: January 1, 2015**
- **Manager Licensing:**
 - Individual managers
 - Management company CEO's and supervisors.
 - Pre-License Education, Continuing Education, Fingerprinting and Background Checks, Testing – general and state specific laws.
 - Rulemaking underway.
 - **Licensed by July 1, 2015**



Disclosure of Fees by CAM

§ § 12-61-1004.5 and 12-61-1010

- **HB14-1254**: Disclosure of fees and charges to an HOA by a community association manager or management company.
- CAM must disclose to HOA board all fees charged (during contract negotiation and annually).
- Must be disclosed as part of the written management contract.
- Must disclose any other remuneration it receives that is in any way connected to its relationship with the HOA.
- Any transfer fee must be disclosed in the management contract or on a line item in the closing settlement statement.
- **Effective: January 1, 2015**

Membership Directory

- [HB14-1125 HOA Membership Directory Publication bill:](#)
- **Amends § 38-33.3-317**
- **Allows an HOA to include owners and residents telephone numbers and email addresses in a membership directory, provided that written consent is first obtained from the owner or resident to publish. Consent can also be withdrawn by the owner or resident.**
- **Effective on August 6, 2014.**

Enforcement—limitation

§ 38-33.3-123(2)

- **Enforcement of building restriction or to compel the removal of any building or improvement must be commenced within one (1) year from the date when the association knew, or in the exercise of reasonable diligence, should have known of the violation.**

Alternative Dispute Resolution (ADR)

- C.R.S. § 38-33.3-124
- CICs are encouraged to adopt a policy.
- Mediation or Arbitration.
- Any controversy between an association and a unit owner arising out of the provisions of this article may be submitted to mediation by agreement of the parties prior to commencing any legal proceeding.
- Effective January 1, 2007.

Reserves

- CCIOA states: § 38-33.3-209.5:
Responsible governance policies:
- (VI) Investment of reserve funds;
- (IX) When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial analysis. For the purposes of this subparagraph (IX), an internally conducted reserve study shall be sufficient.

Financial Information Budget and Reserves

- § 38-33.3-209.4: Public disclosures required:
- (2) Within 90 days after the end of each fiscal year, the association shall make the following information available to unit owners upon reasonable notice:
 - (b) Its operating budget for the current fiscal year;
 - (d) Its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
 - (e) The results of its most recent available financial audit or review.

Construction Defect Matters

- § 38-33.3-303.5: Construction defect actions-disclosure:
 - (2)(b) The notice required by paragraph (a) of this subsection (2) shall state a general description of the following:
 - (I) The nature of the action and the relief sought; and
 - (II) The expenses and fees that the executive board anticipates will be incurred in prosecuting the action.

HOA Information and Resource Center

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THANK YOU

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