

Welcome to Meetings, Elections & Removal Process

The Forum will begin Shortly



THE HOA INFORMATION AND RESOURCE CENTER



COLORADO
Department of
Regulatory Agencies
Division of Real Estate

Meetings, Elections & Removal



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.

Meetings

- ▶ Colorado Law C.R.S. 38-33.3-308 “CCIOA”
- ▶ Three types of meetings, meeting of the unit owners, special meetings and board meetings.
- ▶ Unless otherwise provided in the governing documents, these meetings are open to all member of the association or to any person designated by a unit owner in writing as the unit owner’s representative.
- ▶ Agendas shall be made reasonable available.



Owners' Meetings

- ▶ Meetings of the unit owners of the association are to be held at least one (1) time per year. These meetings are usually held for election purposes, budget approval, amendments to governing documents, and other important matters of interest to the association and its members.
- ▶ Notice of the owners' meeting must be given not less than ten (10) days, and no more than fifty (50) days in advance of any such meeting. The secretary of the association or another officer specified in the bylaws shall cause the notice to be hand delivered or sent prepaid by US mail to the mailing address of each unit owner or the owner's designated address.
- ▶ The notice shall also be physically posted in a conspicuous place for the owners, which is both practical and feasible, and is in addition to any electronic posting or electronic mail notices that may be sent out. The notice shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a member or officer of the executive board.



Special Meetings

- ▶ Special meetings of the unit owners can be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%), or any lower percentage as stated in the association's bylaws, of the votes in the association. Proper notice of the special meeting must be given to the unit owners.
- ▶ Notice of the owners' meeting must be given within thirty (30) days of the demand for a special meeting.



Board Meetings

- ▶ All regular and special meetings of the association's executive board, or any related committees, are open to attendance by all members of the association or their designated representatives. Agendas for meetings of the executive board are to be made reasonably available for examination by all members of the association.
- ▶ Notice requirements for board meetings are usually described in the association's bylaws. CCIOA is silent on the notice requirements for executive board meetings.



Working Sessions

- ▶ Not defined
- ▶ Usually for a specific purpose.
- ▶ Open if not in executive session.
- ▶ No decisions being made, so no right to speak.
- ▶ Business meetings.



Executive Sessions

- ▶ §38-33.3-308(4), C.R.S. – requiring the association board of directors to limit their discussions in executive sessions to specific enumerated topics.
- ▶ The members of the executive board or any committee thereof may hold an executive or closed door session and may restrict attendance to executive board members and such other persons requested by the executive board.
- ▶ Matters for discussion by an executive or closed session are limited to;
 - Matters pertaining to employees of the association or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the association;
 - Consultation with legal counsel or review of or discussion relating to any written or oral communication from legal counsel;
 - Investigative proceedings concerning possible or actual criminal misconduct
 - Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure; and
 - Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy
- ▶ Prior to going into executive session, the chair shall announce the general matter of discussion.
- ▶ No rule or regulation of the board or any committee thereof shall be adopted during an executive session
- ▶ Usually the minutes of an executive session do not state the details of what was discussed during that executive session but must indicate that an executive session was held and the general subject matter.

Running Meetings

- ▶ At an appropriate time determined by the board, but before the board votes on an issue under discussion, unit owners or their designated representatives shall be permitted to speak regarding that issue.
- ▶ The board may place reasonable time restrictions on persons speaking during the meeting.
- ▶ If more than one person wants to address an issue and there are opposing views, the board shall provide for a reasonable number of persons to speak on each side of the issue
- ▶ *Recommendation* – keep a copy of CCIOA with you at all meetings



Running Meetings

Speaking Procedure

- ▶ Parliamentary procedure (Roberts Rules of Order) is specifically designed to help debates and discussions go smoothly, especially when you have a large number of people or contentious issues. It helps to ensure that everyone in such a meeting gets a fair and equal opportunity to participate and speak, utilizing formal motion procedures
- ▶ Many times an association may only have to consider adopting these rules on a temporary basis when that particular need arises and when they would be useful for effectively running the meeting.
- ▶ For instance, these rules can:
 - Require that everyone who wishes to speak must sign up to do so. Provide that if a vote is to be held on an issue, speakers must sign up on either the “in favor” or “against” list.
 - Have speakers present their position in the order that they sign up, and then alternating between “in favor” or “against” points of view.
 - Can allow people who wish to speak a second time to be called on after everyone has had an opportunity to speak once.
 - Allow for a timekeeper, or parliamentarian, who can be in charge of time limits for speakers and to make sure that speakers stay on the issue at hand.
 - Limit the length of time that an individual is allowed to speak on an issue, for instance 3 minutes.
 - Require formal motions and seconding of motions, as well as properly amending motions.
- ▶ At the heart of parliamentary procedure is the rule of the majority with respect for the minority. The objective is to allow deliberation upon questions of interest to the association and to arrive at the sense or the will of the membership upon these questions. Everyone should have an opportunity to speak at owner’s meetings at the appropriate time and in a well-mannered way.

Minutes

- ▶ Association's record of approved action.
- ▶ Written minutes.
- ▶ Recordings.
- ▶ Contents of minutes (detailed wording of the motion and result of the vote).
- ▶ Detail of the minutes varies and is usually brief.
- ▶ Approval of minutes (at next board meeting or annual meeting – sometimes earlier).
- ▶ Publication and accessibility of minutes.
- ▶ Availability for prospective purchasers.
- ▶ **HB12-1237: CIC Record-Keeping**
- ▶ § 38-33.3-317(1)(c), C.R.S. – Minutes of all meetings of its unit owners and executive board, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by any committee of the executive board.
- ▶ § 38-33.3-317(2)(a), C.R.S. – records maintained by the association must be available for examination and copying by a unit owner or the owner's authorized agent (unless excepted).



Colorado Non-Profit Act provisions

▶ Meetings:

- §7-121-402. Notice.
 - In person; telephone, telegraph, teletype, electronically transmitted, or other form of wire or wireless communication; or by mail or by private carrier.
- §7-127-101. Annual and regular meetings.
 - For members.
- §7-127-102. Special meeting.
 - Procedures to call special meetings.
- §7-127-103. Court-ordered meeting.
 - Application to the Court to hold or notice member meeting.
- §7-127-104. Notice of meeting.
 - Notice consistent with its bylaws and in a fair and reasonable manner.



Colorado Non-Profit Act provisions

- ▶ §7-127-201. Members list for meeting and action by written ballot.
 - An alphabetical list of the names of all its members who are entitled to notice of, and to vote at, the meeting or to take such action by written ballot.
 - List made available for inspection.
- ▶ §7-127-202. Voting entitlement generally.
- ▶ §7-127-203. Proxies.
 - Unless otherwise provided by the bylaws, a member entitled to vote may vote or otherwise act in person or by proxy.
 - Appointment of a proxy (See statute section.)
- ▶ §7-127-204. Nonprofit corporation's acceptance of votes.
- ▶ §7-127-205. Quorum and voting requirements for voting groups.
 - A quorum must be present to vote. Unless otherwise provided in articles 121 to 137 of this title or the bylaws, twenty-five percent of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.



Colorado Non-Profit Act provisions

Meetings and Action of the Board:

- ▶ §7-128-201. Meetings.
 - May hold regular or special meetings.
- ▶ §7-128-202. Action without meeting.
 - Process for holding such meetings and notice.
- ▶ §7-128-203. Notice of meeting.
 - Unless otherwise provided in articles 121 to 137 of this title or in the bylaws, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.
- ▶ §7-128-204. Waiver of notice.
 - Director may waive notice of meeting.
- ▶ §7-128-205. Quorum and voting.
 - Unless a greater or lesser number is required by the bylaws, a quorum of a board of directors consists of a majority of the number of directors in office immediately before the meeting begins.
- ▶ §7-128-206. Committees of the board.
 - Board of directors may create one or more committees of the board and appoint one or more directors to serve on them.



Election, appointment and designation of directors § 7-128-104

- ▶ All director shall be elected by the voting members at each annual meeting of the voting members.

Board of Directors

- ▶ **Qualifications of directors. § 7-128-102**
 - A director shall be an individual. The bylaws may prescribe other qualifications for directors.
 - A director need not be a resident of this state or a member of the nonprofit corporation unless the bylaws so prescribe.
- ▶ **Number of directors § 7-128-103**
 - board of directors shall consist of one or more directors, with the number stated in, or fixed in accordance with, the bylaws.



Elections

- ▶ Annual election.
- ▶ Voting in person or by proxy.
- ▶ Election monitoring.
- ▶ Election disputes.
- ▶ Quorums: **§38-33.3-309, C.R.S.**
 - (1) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent, or, in the case of an association with over one thousand unit owners, ten percent, of the votes which may be cast for election of the executive board are present, in person or by proxy at the beginning of the meeting.
 - (2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting or grant their proxy, as provided in section 7-128-205 (4), C.R.S.



Elections

Voting and Proxies section § 38-33.3-310

- ▶ Votes for contested positions on the board are by secret ballot.
- ▶ Ballots shall be counted by a neutral third party or by a committee of volunteers.
- ▶ Such volunteers shall be unit owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the board or another person presiding during that portion of the meeting.
- ▶ The volunteers shall not be board members and, in the case of a contested election for a board position, shall not be candidates



Elections Voting

- ▶ **§38–33.3–310(b)(I), C.R.S.** – requiring that votes for contested positions on the executive board be taken by secret ballot; and that the ballot be counted by a neutral third party or by a unit owner(s) who is not a candidate, who attends the meeting at which the vote is held.
- ▶ **§ 38–33.3–310.5(1), C.R.S.** – requiring any association board member to declare a conflict of interest and abstain from voting on any issue that would financially benefit himself/herself or a member of their immediate family.
- ▶ 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.



Terms of Directors §7-128-105

- ▶ Check bylaws
- ▶ In the absence of any term stated in the bylaws, the term of each director shall be one year.
- ▶ Unless otherwise provided in the bylaws, directors may be elected for successive terms.
- ▶ Despite the expiration of a director's term, a director continues to serve until the director's successor is elected, appointed, or designated or until there is a decrease in the number of directors.



Removal of Directors

- ▶ Look first to your association bylaws, as they usually include a provision to remove board members, as well as the procedure for removal and under what circumstances.
 - Commonly, there is a requirement that a certain number or percentage of owners must sign a petition requesting a special meeting to remove a board member or members.
 - The association must then schedule and notice that special meeting to allow the owners a vote to remove those board members.
 - Typically, this is done at a special owner meeting instead of an annual owner meeting due to the timing of the removal and meeting notice provisions.
- ▶ The Revised Colorado Non-Profit Act does allow members of a nonprofit corporation to remove board members at an owner meeting noticed specifically for that purpose, or by a judicial proceeding



Colorado Revised Non-Profit Act § 7-128-108

Removal of Directors

- ▶ The voting members may remove one or more directors elected by them with or without cause unless the bylaws provide that directors may be removed only for cause
- ▶ If a director is elected by a voting group, only that voting group may participate in the vote to remove that director
- ▶ Directors may be removed as follows;
 - Subject to section 7-127-208 (3), a director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors
 - A director elected by voting members may be removed by the voting members only at a meeting called for the purpose of removing that director, and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director
 - A director elected by the board of directors may be removed with or without cause by the vote of a majority of the directors then in office or such greater number as is set forth in the bylaws; except that a director elected by the board of directors to fill the vacancy of a director elected by the voting members may be removed without cause by the voting members, but not the board of directors.



Colorado Revised Non-Profit Act § 7-128-108

Removal of an Appointed or Designated Director

- ▶ Unless otherwise provided in the bylaws;
 - An appointed director may be removed without cause by the person appointing the director;
 - The person removing the director shall do so by giving written notice of the removal to the director and to the nonprofit corporation; and
 - A removal is effective when the notice is received by both the director to be removed and the nonprofit corporation unless the notice specifies a future effective date.
- ▶ A designated director may be removed by an amendment to the bylaws deleting or changing the designation.



Colorado Revised Non-Profit Act 7-128-109

Removal of directors by judicial proceeding

- ▶ A director may be removed
 - by the district court of the county in this state where a nonprofit corporation's principal office is located or,
 - if the nonprofit corporation has no principal office in this state, by the district court of the county in which its registered office is located, or,
 - if the nonprofit corporation has no registered office, by the district court for the city and county of Denver, in a proceeding commenced either by the nonprofit corporation or by voting members holding at least ten percent of the votes entitled to be cast in the election of such director's successor, if the court finds that the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the nonprofit corporation, or a final judgment has been entered finding that the director has violated a duty set forth in part 4 of this article, and that removal is in the best interests of the nonprofit corporation.
- ▶ The court that removes a director may bar the director from reelection for a period prescribed by the court.
- ▶ If voting members commence a proceeding under subsection (1) of this section, they shall make the nonprofit corporation a party defendant.



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