

2019 Annual Report

HOA Information & Resource Center

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COLORADO

**Department of
Regulatory Agencies**

Division of Real Estate

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Executive Summary

The HOA Information and Resource Center (“Center”) was created in 2010¹, and is organized within the Division of Real Estate (“Division”), a division of the Department of Regulatory Agencies (“DORA”). As directed by Colorado (“State”) law, the Center collects information from Common Interest Communities (“CIC”) via registration and from the inquiries and complaints received. The Center is also responsible for providing information and resources to unit owners (“homeowners”), CIC boards, declarants², and other interested parties about the rights and responsibilities set forth in the Colorado Common Interest Ownership Act³ (“CCIOA”) and other applicable State law.

Pursuant to Colo. Rev. Stat. § 12-10-801(3)(c), the HOA Information Officer (“Officer”), who administers the Center, presents an annual report to the Director of the Division (“Director”) after analyzing the aforementioned information.

This document (“Report”), the 2019 Annual Report, provides an overview of the experiences of homeowners and others in matters involving CICs, and insight into the trends and statistics of the CIC industry within Colorado⁴. A variety of statistics on complaints received and registered CICs are given special coverage. The Report also contains a brief summary of the legislation enacted in 2019 that pertains to CICs, select operational details of the Center, and notes on the future direction of the Center.

In conclusion, the Report is part of the Center’s ongoing commitment to providing information, education, and resources to those affected by, involved with, or interested in CICs that are subject to CCIOA.

¹ HB10-1278 as codified in Colo. Rev. Stat. § 12-10-801(1); effective January 1, 2011.

² From Colo. Rev. Stat. § 38-33.3-103(12):

“‘Declarant’ means any person or group of persons acting in concert who:

(a) As part of a common promotional plan, offers to dispose of to a purchaser such declarant’s interest in a unit not previously disposed of to a purchaser; or

(b) Reserves or succeeds to any special declarant right.”

The declarant is typically the developer of the community.

³ Colo. Rev. Stat. §§ 38-33.3-101 to -402 (2017).

⁴ From Colo. Rev. Stat. § 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. Ownership of a unit does not include holding a leasehold interest in a unit of less than forty years, including renewal options. The period of the leasehold interest, including renewal options, is measured from the date the initial term commences.”

Definitions

Units: A unit, as defined by the CCIOA, is a physical space set aside for separate ownership or occupancy.⁵

Common Interest Communities (“CIC”): is 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.⁶ A CIC is the legal term for HOA.

Condominiums: A condominium is a type of CIC in which real estate that is not designated for separate ownership by homeowners is owned in common by those homeowners.⁷

Cooperatives: A Cooperative is a type of CIC in which the HOA owns the real estate and homeowners are granted exclusive possession of a unit on the basis of ownership in the HOA.⁸

Planned Communities: Planned Communities are a type of CIC that is neither a condominium nor a cooperative; however, a planned community may contain condominiums or cooperatives.⁹ Commonly, CICs registered as planned communities encompass many single-family houses, each of which is equivalent to a single unit; the structure of the house and a small surrounding area are owned exclusively by the homeowner.

⁵ As defined in Colo. Rev. Stat. § 38-33.3-103(30).

⁶ As defined in Colo. Rev. Stat. § 38-33.3-103(8)

⁷ Colo. Rev. Stat. § 38-33.3-103(9)

⁸ Colo. Rev. Stat. § 38-33.3-103(10)

⁹ Colo. Rev. Stat. § 38-33.3-103(22)

Legislation & Executive Branch Review

There were two HOA related legislative bills during the 2019 legislative session, HB19-1050 encouraging the use of xeriscape in common areas, and HB19-1212 to recreate homeowners' association community manager ("CAM") licensing. In addition, recommendations for the HOA Information and Resource Center ("Center"), which faces sunset, and the Governor's Executive Order directing DORA and the Division to conduct a comprehensive review of CAMs and homeowner associations, with resulting recommendations, were also provided to consumers.

3.1 HB19-1050 Encourage Use of Xeriscape in Common Areas: Concerning the promotion of water-efficient landscaping on property subject to the management by local supervisory entities.

Section 1 of the act augments an existing law that establishes the right of unit owners in common interest communities to use water-efficient landscaping, subject to reasonable aesthetic standards, by specifically extending the same policy to limited common elements, which are owned by the community and available for use by some but not all of the unit owners.

Sections 2 and 3 extend existing water conservation requirements, currently applicable only to certain public entities that supply water at retail and their customers, to property management districts and other special districts that manage areas of parkland and open space.

3.2 Recommendations from the 2019 Sunset Review for the HOA Information & Resource Center.

Two recommendations were provided for the Center. The first recommendation was to continue the Center for five years until 2025¹⁰. The second recommendation was to implement a dispute resolution process for complaints¹¹. This process would establish an investigatory process for complaints followed by a dispute resolution process¹². It

¹⁰ 2019 Sunset Report pg. 16

¹¹ 2019 Sunset Report pg. 18

¹² 2019 Sunset Report pg. 19

also calls for an Administrative Law Judge (ALJ) to hear complaints if the parties do not concur with the Division's written decision or if a party requests it¹³.

3.3 HB19-1212 Recreate Homeowners' Association Community Manager Licensing.

In May of 2019, the General Assembly passed House Bill 19-1212, which concerned the recreation of the CAM licensing program. The bill would have continued the CAM licensing program, administered by the Division, for one year. The bill also mandated the creation of a stakeholder committee to make recommendations to the Director regarding a variety of issues, including updates or changes to administrative rules; adjustments to the definition of, and exclusions from, the practice of community association management; the level of oversight necessary for apprentice level licensees; the complaint process and procedures; record keeping; and any other issues about which the Director sought information and feedback from the stakeholders.

Governor's Veto

On May 31, 2019, Governor Polis vetoed HB19-1212. As a result of this veto, the CAM licensing program ended at the Division on June 30, 2019, and the Division no longer has any jurisdiction over CAMs. The Division has since ceased to enforce any licensing, investigations, insurance, and continuing education requirements regarding this program.

Executive Order D-2019-006

In connection with his veto of HB19-1212, Governor Polis issued Executive Order D-2019-006, which directed DORA and the Division to conduct a comprehensive review of existing and potential laws and recommend strategies to promote effective and efficient regulation of CAMs and Homeowner Associations. In his Executive Order the Governor stated "the State has an opportunity to change the conversation about policies that impact CAMs and HOAs. The State should examine the structure and management of HOAs to ensure they protect homeowners and, ultimately, save homeowners money."

The Executive Director of DORA was directed to consider, develop, and make recommendations on how to promote effective and efficient regulation of CAMs and HOAs, including:

1. The licensure of CAMs, in consideration of the 2017 Sunset Report recommendations, and whether licensure is necessary to protect consumer safety and is cost effective;

¹³ 2019 Sunset Report pg. 19

2. Approaches to improve transparency among HOAs;
3. Methods to reduce costs and improve the transparency of HOA fees and fee schedules; and
4. Strategies to promote homeowner rights and consumer protections through an evaluation of CCIOA and other related acts or regulations.

3.4 2019 Report concerning the Governor's Executive Order D-2019-006. Directing Stakeholder Process to Examine Community Managers and Homeowner Associations.

The 2019 report recommendations stemming from the Governor's Executive Order were as follows:

1. Perform a Sunrise Review of CAMs and CAM regulation¹⁴.
2. Evaluate the definitions of the terms "community association management" and "community association manager", regarding support staff who provide clerical, ministerial, accounting and maintenance functions¹⁵.
3. Evaluate licensing exemption for Board Members, members of the CIC or W2 employees who report to and are directed by the Board, who perform activities which would otherwise require a license¹⁶.
4. Evaluate licensing exemptions for small CICs and/or those with limited budgets¹⁷.
5. Evaluate the need for an Apprentice level license¹⁸.
6. Education on owning a home in a CIC would be made available to prospective buyers of property in a CIC. The HOA Information and Resource Center ("HOA Center") would have available a "Buying a Home in an HOA" education guide available on its website¹⁹.
7. The failure of a CIC to provide access by its members to the records of the CIC within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, would create a rebuttable presumption that the CIC willfully failed to comply with this rule²⁰.
8. An owner who is denied access to official records of their CIC is entitled to actual damages or minimum damages for the association's willful failure to comply. The minimum damages would be \$50 per calendar day, up to 10 days,

¹⁴ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg.8

¹⁵ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg.9

¹⁶ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg.9

¹⁷ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg.9

¹⁸ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg.10

¹⁹ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg.11

²⁰ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg.12

the calculation to begin on the 11th business day after receipt of the written request²¹.

9. Prohibit voting by secret or written ballot in an open meeting, except for the election of officers²².
10. Allow the use of independent election monitors if requested by an owner and paid for by the requestor²³.
11. An owner may make a request to be notified on a continual basis of any CIC meetings. Such request shall be made at least once a year in writing and include the owner's name, address, zip code, and any email address as appropriate²⁴.
12. Provide meetings notice by electronic transmission in a manner authorized by law for meetings of the Board of Directors, committee meetings requiring notice under this section, and annual and special meetings of the members to any member who has provided an email address²⁵.
13. An owner may record any portion of a meeting required to be open²⁶.
14. The CIC may, as a common expense, annually obtain an independent audit of the records. Copies of the audit should be made available to all members of the CIC. Any audit should be performed by a certified public accountant, if required by the bylaws or a vote of the Board of Directors or a majority vote of the members of the CIC voting at a meeting of the CIC²⁷.
15. On a regular basis, cause to be conducted a study of the reserves required to repair, replace and restore the major components of the common elements and any other portion of the CIC that the CIC is obligated to maintain, repair, replace or restore:
 - a. At least annually, review the results of that study to determine whether those reserves are sufficient; and
 - b. At least annually, make any adjustments to the CIC's funding plan which the Board of Directors deems necessary to provide adequate funding for the required reserves²⁸.
16. All fee schedules related to the transfer of real property located in a CIC would be publicly accessible from a centralized repository so consumers and interested parties can "shop" CIC fees²⁹.

²¹ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg. 12

²² 2019 Report Concerning the Governor's Executive Order D-2019-006 pg. 12

²³ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg. 13

²⁴ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg. 13

²⁵ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg. 14

²⁶ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg. 14

²⁷ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg. 15

²⁸ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg. 15

²⁹ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg. 16

17. Mandatory Board Member education. The HOA Center would provide education to Board Members on its website (i.e. governing documents, governance, budgeting, and reserve studies). Evaluate exemption for CICs with 25 units or less³⁰.
18. Mandatory minimum number of bids regarding projects over a certain dollar amount³¹.
19. Creating a dispute resolution process would assist consumers who have valid complaints against CICs and ensure that their concerns are adequately addressed in a formal, binding forum. Implementation of a dispute resolution process could assist consumers with unscrupulous actions of CICs and ultimately provide protections to consumers.³².

³⁰ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg. 17

³¹ 2019 Report Concerning the Governor's Executive Order D-2019-006 pg. 17

³² 2019 Report Concerning the Governor's Executive Order D-2019-006 pg. 18

Registration

The Center is charged with the task of registering CICs in Colorado. Furthermore, the Center collects the information provided in these registrations into a database³³. As of December 31, 2019, 7,881 CICs are registered with the Center and 2,405 expired CICs for a total of 10,286 CICs in Colorado.

The absence of authority to enforce the registration requirement hinders the Center in its efforts to register all the communities within Colorado. The effects of the lack of enforcement in CIC registration is illustrated in figure 4.1, which shows a disparity between registered and expired CICs.

It is evident, that some associations are failing to comply with Colo. Rev. Stat. § 38-33.3-401(4)(a); registering once and then not renewing their registration for years on end or claiming that they are validly registered while providing erroneous data. Currently, the Division lacks the statutory authority to impose other remedies for failing to renew or to revoke registrations.

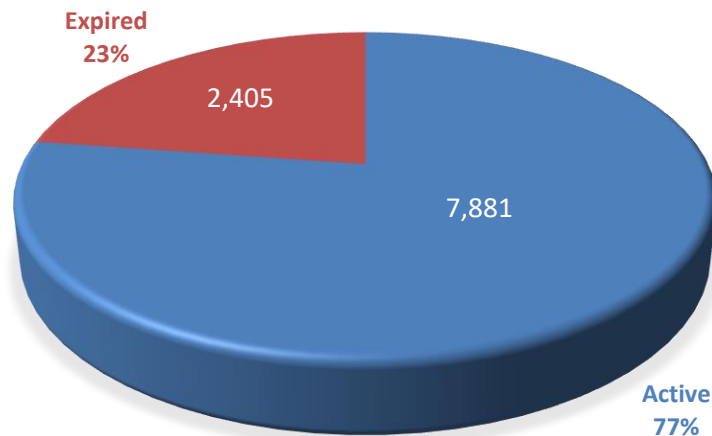


Figure 4.1 Registration numbers for 2019

The only encouragement given to these communities to register and renew their registration is the lien provision³⁴ which is solely an affirmative defense to be employed only in applicable legal proceedings.

³³ Pursuant to Colo. Rev. Stat. § 12-10-801(3)(a)(I).

³⁴ Colo. Rev. Stat. § 38-33.3-401(3)

An HOA that fails to register or allows its registration to lapse may not impose or enforce certain liens and is limited in the actions it may pursue or specific means of enforcement it may utilize, until it is validly registered.

Figure 4.2 shows the breakdown of registered and expired CICs in Colorado by region.

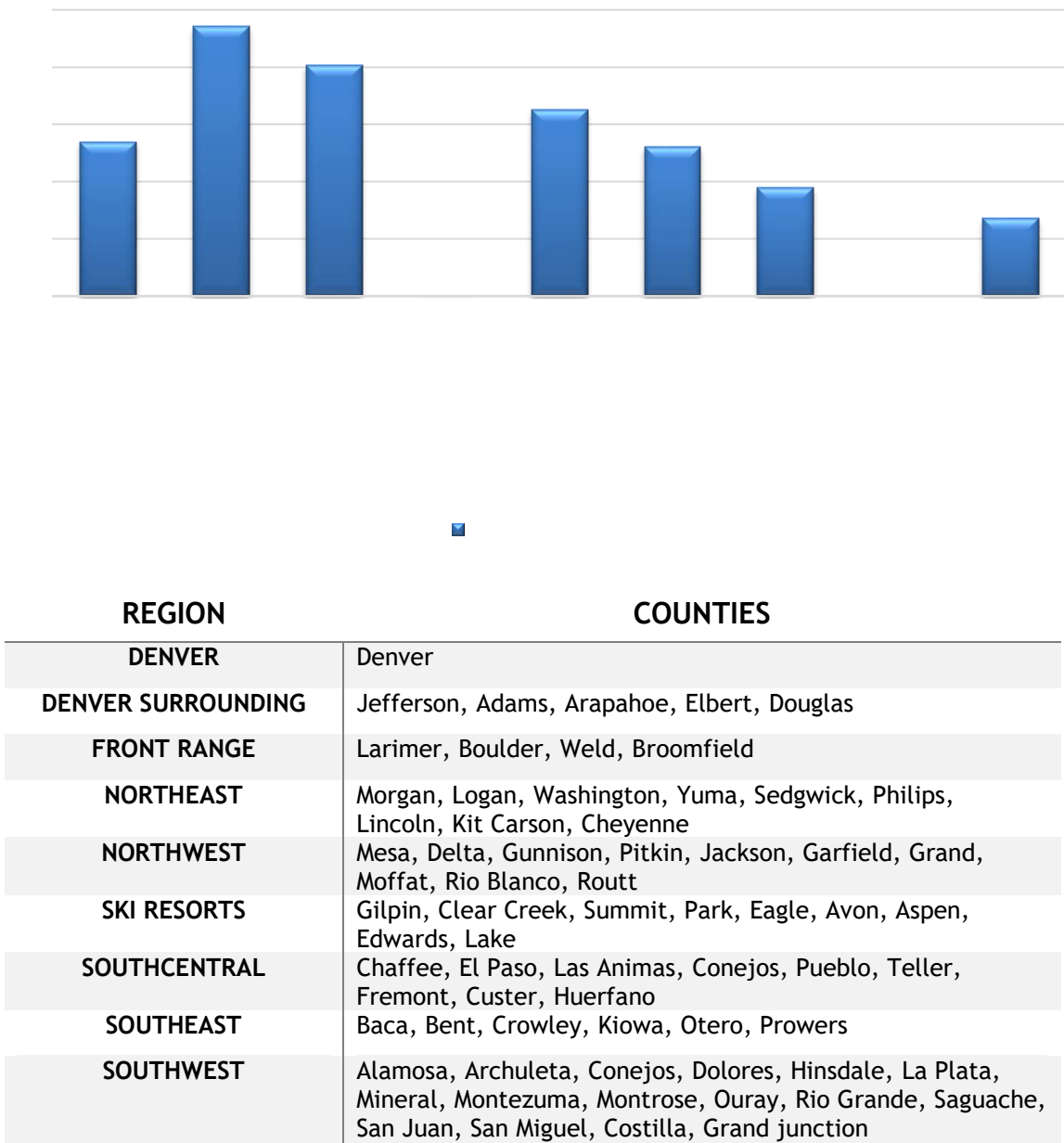


Figure 4.2 CIC's by Region

4.1 Population

Information gathered from the registered and expired CICs is used to calculate the number of people in the state that reside in CICs.

The number of individuals living in a CIC can be calculated by taking the number of units and multiplying it by 2.63 (the U.S. Census' estimated persons per household).

A total of 958,179 units were in both registered and expired CICs in 2019. By taking the 958,179 units x 2.63, it is determinable that an estimated 2,520,011 Colorado residents live in CICs. The population of Colorado was estimated at 5,758,736³⁵ in 2019, thus you can subtract the 2,520,011 Colorado residents living in an HOA from the 5,758,736 residents in Colorado to determine the number of residents that do not reside in a CIC ($5,758,736 - 2,520,011 = 3,238,725$). Thus, in 2019, 44% of Colorado residents live in a CIC as shown in figure 4.3. This percentage has remained the same since 2018.

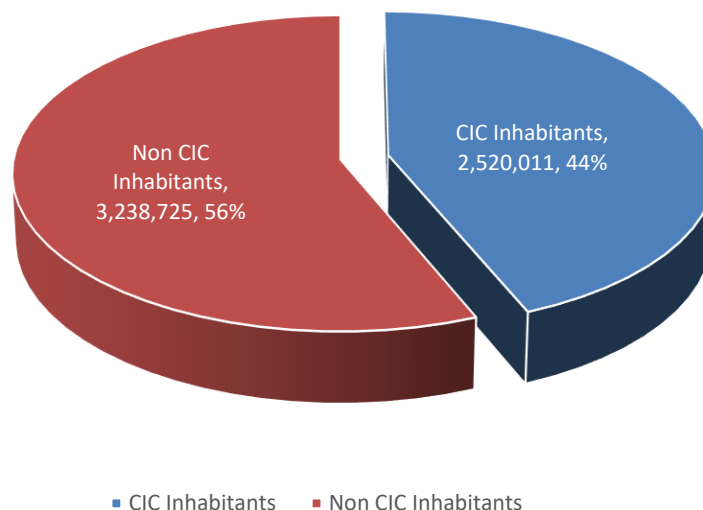


Figure 4.3 Population in CICs

³⁵ Population statistics gathered from <http://worldpopulationreview.com/states/colorado-population/>

4.2 Professionally Managed vs. Self-Managed

The Center now requires common interest communities to indicate when they register whether they are professionally managed or self-managed. Of the 7,881 registered CICs reporting managing status, 44% are self-managed, and 56% are professionally managed. Figure 4.4 illustrates the management status of CICs.

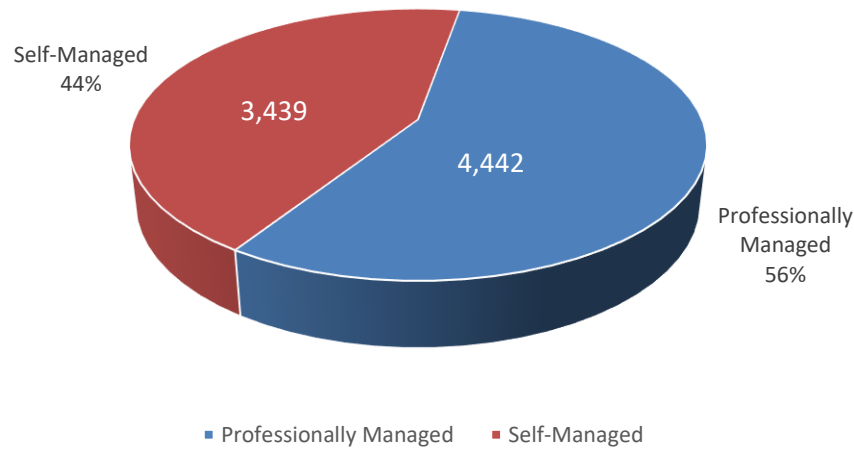


Figure 4.4 CICs Management Status

Figure 4.5 depicts the management status of CICs by CIC type.

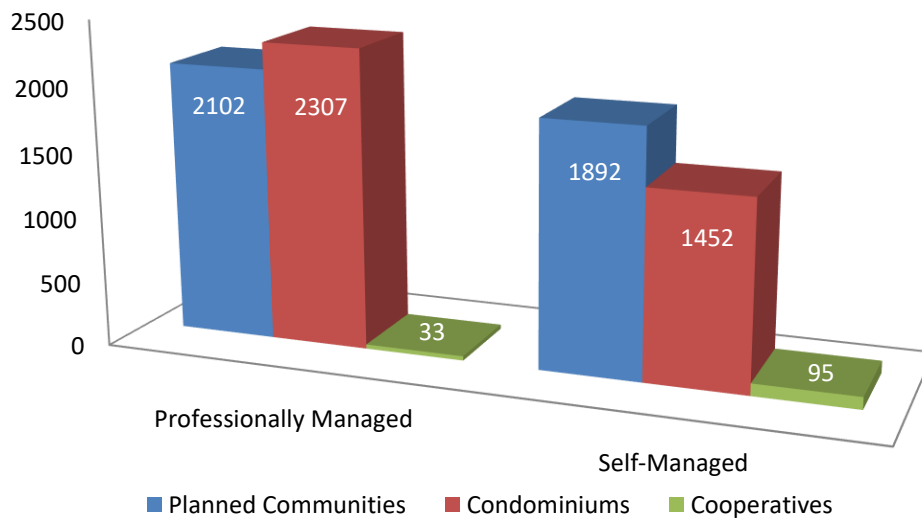


Figure 4.5 CIC Management Status by Type

Inquiries

The Center logged 5,551 separate inquiries during 2019. In responding to these inquiries, the Center answered questions and provided referrals to applicable legal, alternative dispute resolution, and government services. Parties that contacted the Center for information include: homeowners, tenants, community association managers, board members, attorneys, government agencies, vendors, and declarants. Most of the inquiries to, and assistance from, the Center pertained to the following:



Figure 5.1 Inquiry Table

Complaints

From January 1, 2019 to December 31, 2019, the Center received 662 complaints via mail, phone, e-mail, submission in person, and the Center's website. The complaints originated from homeowners and others involved with CICs. Figure 6.1 compares the amount of complaints received between 2018 and 2019.

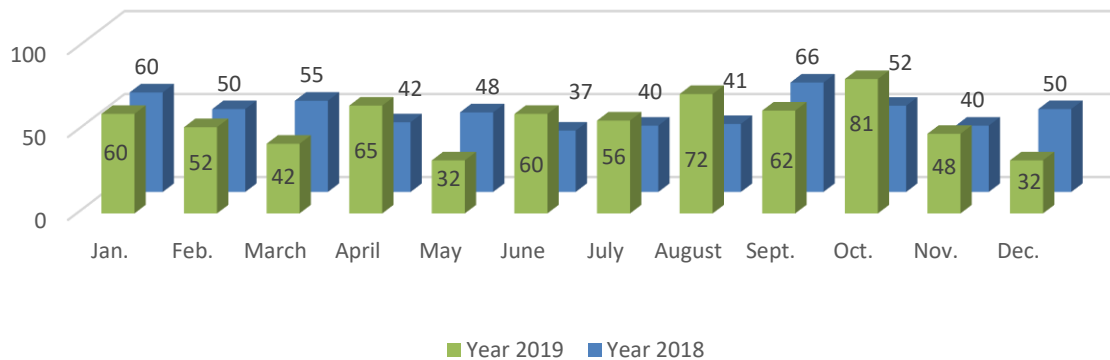


Figure 6.1 Complaints by Month over a Two Year Period

As can be seen from figure 6.1, there were 581 complaints in 2018 and 662 complaint in 2019.

There has been a 14% increase in complaints that can be attributed to several factors. One such factor is the de-regulation of the Community Association Management Program (CAM). As the lack of regulation over CAMs continues this trend of complaints against CAMs to the HOA Center will likely continue to increase.

6.1 Complaint Categorization

The Center categorized the 662 complaints it received in 2019 according to type (i.e. complaints received from those living in Condominium, Planned Development or Cooperatives.) Figure 6.2 illustrates this breakdown.

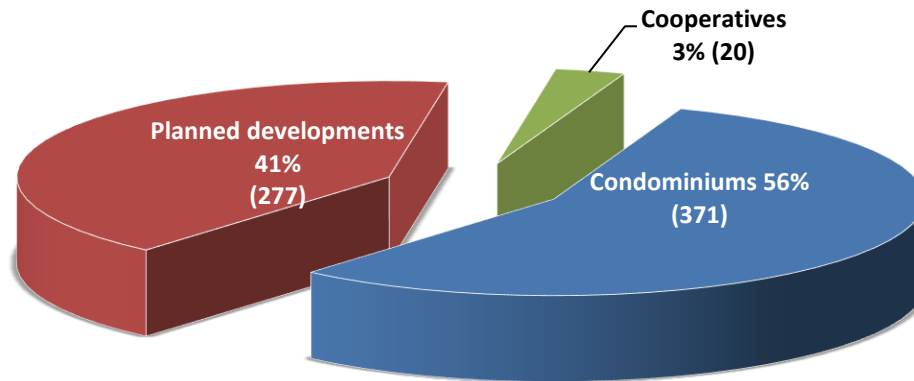


Figure 6.2 Complaints by CIC Type

Furthermore, data collected from submitted complaints is used to determine the geographical area of the community concerned. Figure 6.3 illustrates the complaints the Center received by geographical region (for specified counties see Figure 4.2).

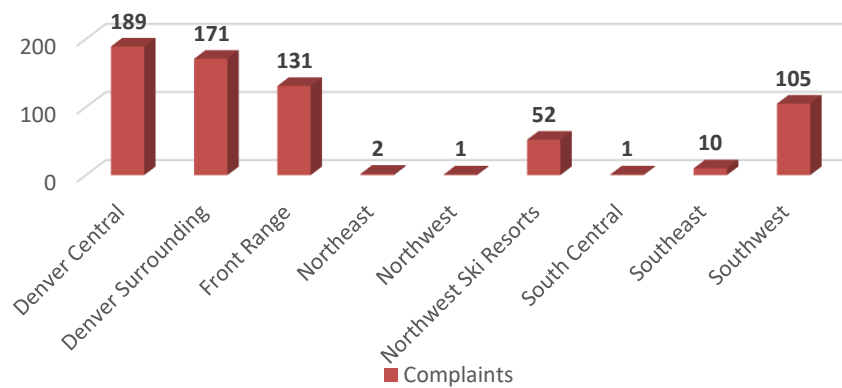


Figure 6.3 Complaints by Region

6.2 Complaints by Topics

While there were only 662 complaints, each complaint raised multiple issues. For example the Center may receive one complaint that discussed multiple issues such as enforcement, failure to repair, and excessive fees. The total number of issues raised in the 662 complaints was 1,505. The principal issue raised in complaints received for 2019 centered on CIC boards not performing maintenance or repairs. A large number of the complaints concerning allegations of the association not enforcing their covenants, rules, and regulations; improperly enforcing those covenants; selectively enforcing covenants or rules and regulations; or having lax enforcement for the benefit of a board member. Figure 6.4 illustrates the number of issues raised per complaint received.

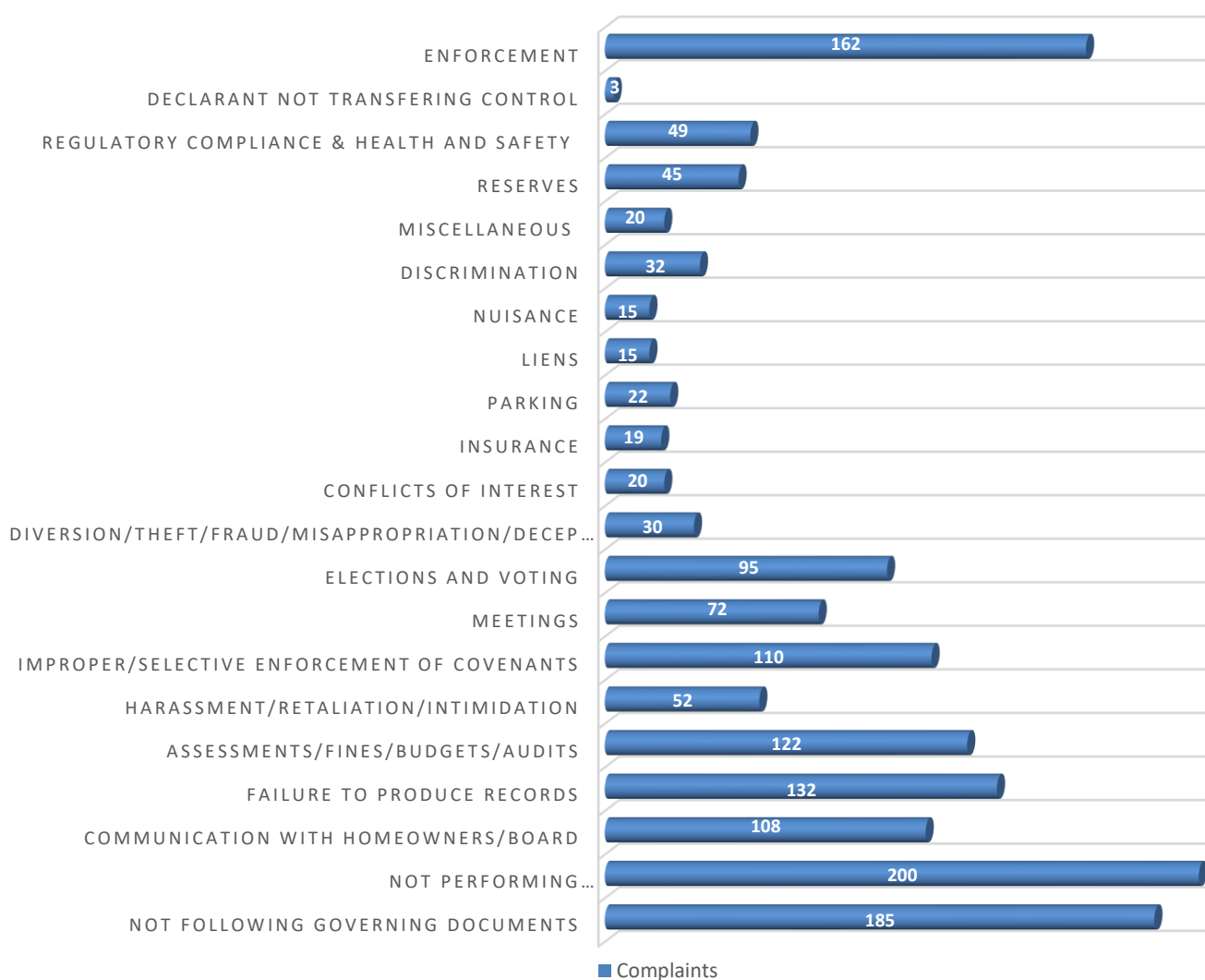


Figure 6.4 Complaints by Type

6.3 Consumer Expectations

Once again, a substantial majority of all complaints relate to examining or obtaining copies of the books or records of the community. The Center finds this concerning; the law is very clear and straight forward regarding document disclosure, those requirements are outlined in the applicable statutes³⁶.

Failure to repair, lack of communication, transparency, poor accounting practices or inadequate budgeting remain major complaint areas. Accusations of excessive assessments, owners not properly or adequately being informed of owner and board member meetings, little or no communication to the owners of events in the community, and board members ignoring or being dismissive toward owner concerns are frequently made.

The Center also receives feedback from owners who believe CICs should be regulated. However, the Center lacks the statutory authority³⁷ to investigate or mediate disputes between homeowners and CIC boards, homeowners and CAMs or CIC boards and CAMs. Nor can the Center sanction boards for any violations of the applicable common interest community laws.

While the Center strives to obtain compliance through guidance, information, and education, many of these issues could be resolved with mandatory board member and owner education and training, community websites and sanctions for CIC boards in violation of their governing documents or CIC laws.

³⁶ Colo. Rev. Stat. § 38-33.3-209.4

³⁷ Colo. Rev. Stat. § 12-10-801

Accomplishments & Objectives

7.1 Review of 2019

In 2019, the Center debuted a new and dynamically designed newsletter. This newsletter allows consumers to access resources such as presentations, articles, and upcoming events in an efficient and user-friendly manner.

Along with handling over 5,000 inquiries for information and assistance; the Center participated in 40 public DORA HOA forums, 18 of which were hosted outside of the Denver metro area. The Center also attended, participated and presented at 11 seminars, including 5 senior fairs and a town hall meeting. Guest presenters and industry writers added to the Center's educational efforts and resources.

A wide variety of topics at HOA forums were presented, including homeowner education, Q&A's and an interactive session with professional mediators, insurance agents, and other industry professionals. The Center also teamed up with the City of Boulder and the Council of Neighbors both in Colorado Springs and Centennial for their "HOA Days" presentations and town halls, participated in the Pueblo County Legal Resource Day, and had consumer informational booths at the several Colorado Bar Association Senior Law Days and Safety Fairs. In addition, the Center participated in a Colorado Association of Realtors® "Drop the Mic" webinar show concerning the issues faced when living in a common interest community.

7.2 Direction of the Center in 2020

In 2020, the Center plans to expand its outreach and visibility by utilizing new and innovative social media platforms, a series of ongoing informative mini videos, toolkits and collaboration with other government agencies, industry groups, and professionals that assist homeowners living in common interest communities. Providing CIC workshops, educational sessions, forums, and additional educational materials for homeowners will remain a priority for the Center.