



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

December 31, 2019

Governor Jared Polis
State Capitol Building
200 East Colfax
Denver, CO 80203

Dear Governor Polis,

I am pleased to submit the Department of Regulatory Agencies (DORA's) recommendations in response to Executive Order D 2019 006, which directed the Executive Director of DORA, and the Director of the Division of Real Estate, to conduct a comprehensive review of how to better protect consumers, community, and homeowner associations (HOAs). The report includes "recommendations on matters including the following: 1) the licensure of community association managers, considering recommendations from the 2017 DORA sunset report, and whether licensure needed to protect consumer safety is cost-effective; 2) approaches that improve transparency among HOAs; 3) methods to reduce costs and improve the transparency of homeowner association fees and fee schedules; and 4) strategies to promote homeowner rights and consumer protections through an evaluation of the Colorado Common Interest Ownership Act and other related acts or rules."

The recommendations are based on extensive stakeholder engagement completed over the past six months. The Division of Real Estate created a survey that was sent out to over 70,000 recipients, as well as hosted four separate stakeholder meetings to discuss the issues presented in the Executive Order. We received over 500 responses to the survey, approximately 100 open comment submissions, and each of the stakeholder meetings were attended by approximately 40-50 stakeholders.

We appreciate the opportunity to collaborate with stakeholders to find common solutions to address the challenges with HOAs and homeownership more broadly, and our recommendations respond to the thoughtful input and innovative ideas raised during this process.

Sincerely,

Patty Salazar
Executive Director

Marcia Waters
Director- Division of Real Estate





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**Department of
Regulatory Agencies**

Division of Real Estate

**2019 Report Concerning the Governor's Executive
Order D-2019-006:
Directing a Stakeholder Process to Examine
Community and Homeowner Associations**

December 2019



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Introduction

The Division of Real Estate (“Division”) is housed within the Department of Regulatory Agencies (“DORA”) and regulates Appraisal Management Companies, Mortgage Loan Originators, Mortgage Companies, Real Estate Appraisers, Real Estate Brokers and Subdivision Developers. The Division’s Director, Marcia Waters, has been with the Division since August of 2005. Ms. Waters serves as the administrator for the Real Estate Commission, the Board of Real Estate Appraisers, the Board of Mortgage Loan Originators and the HOA Information and Resource Center.

The Division protects Colorado’s consumers through licensing, regulation and enforcement of licensed real estate professionals in Colorado. The Division’s mission is to create a balance between consumer protection and the business needs of the licensed professional. The Division strives to accomplish this balance by streamlining regulatory requirements for the licensee and providing a collaborative approach to regulation.

In its effort to accomplish its mission to protect the Colorado consumer, the Division strives for platinum level customer service by providing timely complaint resolution and delivering consumer and professional outreach across the four corners of the state. To enhance its customer’s experience, the Division is committed to improving its processes by maximizing value for its customers and reducing unnecessary regulatory burdens. The Division also believes in fostering internal and external partnerships to forge common successes.



Legal Framework

History of Regulation

Homeowners Associations

In 2010, the General Assembly passed House Bill 10-1278, which established The HOA Center. The Bill created the Center to be a central repository for complaints related to homeowner associations ("HOAs") throughout Colorado.

The Center's purpose is to ascertain and report the number and types of complaints received concerning HOAs. In addition to its role as a central repository for complaints related to HOAs, the Center is also tasked with providing information and guidance to consumers and HOA members concerning a variety of issues pertaining to living in and operating a homeowners association.

The Center provides assistance to homeowners, associations, managers, and declarants in understanding their rights and responsibilities under the Colorado Common Interest Ownership Act ("CCIOA"), as well as other relevant laws.

Community Association Managers

In 2013, the General Assembly passed House Bill 13-1277 which required all community association managers ("CAMs") and community association management ("CAM") companies to obtain a license from the Director of the Division, effective July 1, 2015.

In 2014, the General Assembly passed House Bill 14-1254, which required CAMs to disclose all fees to the Board of Directors of the Common Interest Community ("CIC") for which they manage on an annual basis.

In 2015, the General Assembly passed House Bill 15-1343, which further clarified the term "community association management" and created a new license type for an Apprentice working under the direct supervision of a licensed manager and exempted timeshares.

Governor's Actions Regarding HB19-1212

HB19-1212

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 directs 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. 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;
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.



Discussion, Analysis and Recommendations

Discussion

In an effort to comply with the Governor's Executive Order, the Division created a survey ("the Survey") in order to facilitate feedback from stakeholders. It was designed using the Governor's Executive Order as a roadmap. Each question is in relation to one of the four topics addressed by the Governor. The Survey was sent out to over 70,000 recipients.

The Division received over 500 responses to the Survey and approximately 100 open comment submissions. Although the overall number of responses to the Survey was less than anticipated, the Division must utilize the data gathered from the Survey as representative of stakeholder sentiment and relied on many of the inferences made when creating this report.

In addition to the Survey, the Division, in cooperation with the Executive Director's Office, held four separate stakeholder meetings to discuss the four different issues presented in the Governor's Executive Order. Each meeting lasted approximately two hours. Meetings began with a short review by the Division of the relevant survey questions and responses. This was followed by a stakeholder forum wherein each individual stakeholder was provided time to discuss issues and concerns that were important to them. Each meeting ended with a DORA representative recapping some of the main issues and concerns that had been discussed.

Each of the meetings were attended by approximately 40 - 50 stakeholders. There was a significant representation of homeowners at each meeting. The next largest representative group appeared to be a mix of professionals from the industry. It should be noted that a majority of the most fervent frustrations expressed at the stakeholder meetings came from a common group of homeowners that attended multiple stakeholder meetings.

Analysis and Recommendations

One of the primary goals of the stakeholder meetings was to elicit feedback from interested parties regarding the need for and effectiveness of regulation of the CAM industry. Half of all respondents to the Survey agreed with the statement "The Community Association Management Practice Act places reasonable safeguards to ensure the protection of homeowners¹." Amongst those respondents who identified as CAMs, that figure is 47% and for those who identified as homeowners, it is also 47%².

More than 70% of respondents to the survey agree with the most recent statutory definition of a Community Association Manager¹. The Division asked respondents to "Please describe any modifications you would make to the definition". In response, the Division received several comments, such as "All managers and employees should have a fiduciary duty to act in the best interest of the property owners"; "This definition and program are overkill for small HOAs"; and "It should only apply to CAM companies not individuals serving on an HOA Board¹."

¹ *Stakeholder Process to Examine Community and Homeowner Associations Survey – Results and Open Comments*. Dept. of Regulatory Agencies, Division of Real Estate, 2019

² *Breakdown of the Survey Responses by Self Identifier*, Dept. of Regulatory Agencies, Division of Real Estate, 2019



i. Recommendations regarding the licensure of Community Association Managers, and whether licensure is needed to protect consumer safety and is cost-effective.

More than 75% of respondents to the Survey agree that regulation of Community Association Managers and/or Community Association Management Companies is necessary to protect the public health, safety or welfare¹. Amongst those respondents who identified as CAMs, that figure is 64% and for those who identified as homeowners, it is 82%².

Roughly 30% of the open comments received included support for some form of licensure for CAMs or CAM companies¹. These statements included comments such as “Licensure and the required education raises standards”; “Regulation and licensing is an important component of consumer protection”; and “I urge the DORA office to continue improving the property manager [CAM] licensing law¹.” The Division heard similar remarks at the stakeholder meetings, although many of the respondents were unable to distinguish the difference between regulating CAMs as opposed to problematic actions of HOA board members.

i. Perform a Sunrise Review of CAMs and CAM regulation.

More than 75% of respondents to the Survey agree that the public could benefit from the regulation of Community Association Managers and/or Community Association Management Companies¹. Amongst those respondents who identified as CAMs, that figure is 69% and for those who identified as homeowners, it is 80%².

The 2012 Sunrise Review of Common Interest Community Association Managers, recommended the regulation of the community management companies rather than the individual CAMs³. From July 1, 2015 through June 30, 2019, the Division received 630 complaints against the CAMs and 411 complaints against the CAM companies⁴. Of those 1,041 cumulative complaints, 926 (or 89%) were ultimately dismissed with no action taken against the licensee⁴. Of the remaining complaints where the Division was able to substantiate misconduct on the licensee’s part, 77 cases resulted in diversionary actions (remedial actions that result in dismissal of the complaint) and 18 cases were addressed with formal discipline (i.e. imposition of fines, remedial coursework, suspension of the license or revocation of the license)⁴.

If a sunrise review is conducted, it is recommended that DORA’s Office of Policy, Research and Regulatory Reform (“COPRRR”) again evaluate the need for licensure of the entities versus the individuals, possible insurance or bonding requirements, and education and examination requirements. One of the challenges that the Division encountered in administering the CAM licensure program was with the vagueness of the statutory definitions regarding who must obtain a license and what comprised community association management. If regulation were to move forward of the entity, the individual, or both, clarity in the license law is essential for the success of administering the program.

³ 2012 Sunrise Review: Common Interest Community Association Managers. Dept. of Regulatory Agencies, Office of Policy, Research and regulatory Reform, 2012

⁴ Dept. of Regulatory Agencies, Division of Real Estate, 2019



ii. Evaluate the definitions of the terms “community association management” and “community association manager”, regarding support staff who provide clerical, ministerial, accounting and maintenance functions.

Almost one-third of respondents to the Survey disagree with or are neutral towards the statement “A license should be required for interactions with members or nonmembers of the Common Interest Community, acting with the authority of the common interest community with respect to its business, legal, financial, or other transactions¹.” Amongst those respondents who identified as CAMs, that figure is nearly 40% and for those who identified as homeowners, it is 14%².

Several statements in support of an evaluation of terms, as they regard support staff, were provided to the Division. These statements included comments such as “There was not a clear way to hire managers from outside the industry. Although the rules provided for an apprentice license, there was a direct, physical supervision requirement that made hiring and training inexperienced people overly burdensome” and “The definition should exclude administrative staff that are working at the direction of the management company policies or the community manager¹.”

Managers spend a significant amount of time in the field and as such, they need staff in the office to be available to answer routine questions from members of the CIC as well as members of the public. Under previous regulation, any “interactions with members or nonmembers of the common interest community, acting with the authority of the common interest community with respect to its business, legal, financial, or other transactions” required a license.

iii. 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 license.

A widely held opinion of many respondents to the Survey was regarding the need for a carve-out exemption to licensure when homeowners or Board Members conduct activity that would have previously amounted to community association management, and thus, required a license. The Division received comments such as “Duly elected HOA Board Members should be exempt from license requirements”; “Self-managed HOAs should be exempt”; and “Resident individuals managing their local HOA should be exempt from regulation¹.” Without an exemption to licensure, the regulatory program proved to be expensive and overly burdensome to those board members, CIC members, or W-2 employees who were performing duties on behalf of the HOA.

iv. Evaluate licensing exemptions for small CICs and/or those with limited budgets.

Several statements in support of a licensing exemption for small CICs and/or those with limited budgets were provided to the Division. These statements included comments such as “In any new CAM licensing law, I would like to see a provision that exempts self-managed



HOA's made up of a small number (e.g., less than 50) of unattached residential properties from licensing requirements for resident members of the HOA"; "Make sure small associations are exempt"; and "Exempt small associations of less than 20 units with budgets below \$12,000 per year¹."

While all CICs share certain characteristics, not all have the same needs. When considering the need for regulation, the Division recommends that COPRRR evaluate licensing exemptions for small and/or self-managed CICs.

v. Evaluate the need for an Apprentice level license.

Over 55% of respondents to the Survey disagree with or are neutral towards the statement "An Apprentice level license is necessary as a license type¹." Amongst those respondents who identified as CAMs, that figure is 68% and for those who identified as homeowners, it is 44%². Several statements in support of an evaluation of the need for an Apprentice level license were provided to the Division. These statements included comments such as "There was not a clear way to hire managers from outside the industry. Although the rules provided for an apprentice license, there was a direct, physical supervision requirement that made hiring and training inexperienced people overly burdensome.¹" The apprentice license was created to enable community association management companies to hire new employees and evaluate their abilities and likelihood to remain in the industry before a financial investment was made to pursue the qualifying education or insurance requirements. Because apprentices did not have the requisite education, the Division required that apprentices be directly supervised by a licensed CAM to ensure compliance with the practice act.

When considering the need for regulation, the Division recommends that COPRRR evaluate the need for an apprentice level license. The usefulness of the apprentice level license during the CAM Program's existence was not established. Since the inception of the CAM Program in July of 2015, 2200 individual CAM licenses were issued, while only 343 Apprentice level licenses were issued⁴. The benefits of reforming or eliminating this level of licensure should be evaluated.

Recommendations regarding approaches that improve transparency among HOAs.

The Division's HOA Center has been conducting an ongoing survey ("HOA Survey") since August of 2015. The HOA Survey is made available on the Division's website. As of the end of October 30, 2019, the HOA Survey has received more than 1000 responses.

The statistics obtained from the Survey and the HOA Survey ("Surveys") appear to indicate a general dissatisfaction with transparency amongst CICs. More than a third of respondents to the Survey stated they felt neutral towards or disagreed with the statement "my CIC conducts their regular board and annual meetings in an open and transparent manner¹." Amongst those respondents who identified as homeowners, that figure is 49%².



Responses to the Surveys also appear to demonstrate a general dissatisfaction with CICs. According to the HOA Survey, nearly 80% of the respondents are dissatisfied with their CIC, 75% are dissatisfied with their Board and 72% are dissatisfied with their CAM⁵.

More than a third of respondents to the Survey disagreed with the statement “The level of communications coming from my CIC and/or Community Association Management Company regarding governance is adequate¹.” Amongst those respondents who identified as homeowners, that figure is 54%².

A third of respondents to the Survey felt neutral towards or disagreed with the statement “My CIC utilizes a website or other similar mechanism for transparency and ease of access to association records, such as governing documents, current meeting minutes, and financials¹.” Amongst those respondents who identified as homeowners, that figure is 44%². One possible consideration is to allow for a central repository for CIC documents, but the timeliness and accuracy of those documents will be contingent on the individual or entity responsible for uploading that data on behalf of the HOA.

i. 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 website.

More than 20% of respondents to the HOA Survey indicated that they did not review the governing documents (covenants, declaration, bylaws, rules and regulations) when they purchased their home⁵. In response to the statement “I understand the fees being charged by my CIC”, 37% of respondents to the Survey stated they felt neutral or disagreed¹. Amongst those respondents who identified as homeowners, that figure is 50%².

Significant feedback from attendees at the stakeholder meetings who have identified as industry members as well as homeowners within CICs, concerned the lack of homeowner education and understanding regarding CICs. Many stakeholders expressed a belief that before someone decides to purchase a home in a CIC, they should have access to adequate education regarding the rights and responsibilities of owning a home in a CIC.

During the fourth stakeholder meeting, the Division heard from a homeowner who had been experiencing issues with their CIC regarding the CIC’s interpretation of what constitutes a common area. In their comments to the Division, the homeowner stated that “Unbeknownst to me, there was a long history of conflict with the previous owner and the HOA around their jurisdiction over the private property of the associated lots we were purchasing¹.” If this homeowner was given the opportunity to review an educational guide on CICs prior to their purchase, they may have been able to identify the language in the governing documents which caused the controversy and would have been able to make a more informed choice regarding their purchase in that particular CIC.

⁵ *Colorado HOA Information and Resource Center Homeowner Survey*, Dept. of Regulatory Agencies, Division of Real Estate, 2019.



ii. 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 rule.

More than two-thirds of respondents to the HOA Survey disagreed when asked “Does your HOA provide records in a timely manner⁵?” In response to the statement “My CIC provides requested documents to unit owners in a timely manner”, 46% of respondents to the Survey stated they felt neutral or disagreed with the statement¹. Amongst those respondents who identified as homeowners, that figure is 62%².

When asked “What steps would you like your CIC and/or CAM to take to improve transparency?” the Division received responses such as “More communication”; “Communication with homeowners”; and “More often and detailed minutes and communications¹.”

iii. 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, the calculation to begin on the 11th business day after receipt of the written request.

In response to the statement “My CIC allows me access to review the records, including bank statements, invoices and copies of checks issued by the Board”, 34% of respondents to the Survey stated they felt neutral or disagreed with the statement¹. Amongst those respondents who identified as homeowners, that figure is 49%². Nearly a quarter of respondents to the Survey stated they felt neutral towards or disagreed with the statement “My CIC makes available to unit owners the examination or copying of its records¹”. Amongst those respondents who identified as homeowners, that figure is 35%².

The Division received several comments regarding document requests, such as “Require full, free access to community records for all property owners”; “Charge fines if reserve studies, meeting minutes, insurance contact information or bids are withheld when requested” and “I think there should be a way to fine HOA's for noncompliance¹.”

The goal of recommendations ii & iii is to ensure accountability by CICs in providing documents and records that are properly requested in writing. Assuming the requestor is entitled to the records and/or documents requested, and subject to the requestor correctly following any procedure outlined in the CIC’s governing documents regarding records request, under these recommendations CICs would have to comply with requests within 10 days or face financial consequences.

iv. Prohibit voting by secret or written ballot in an open meeting, except for the election of officers.

Almost 35% of respondents to the Survey felt neutral towards or disagreed with the statement “My CIC holds fair and transparent board member elections¹.” Amongst those respondents who identified as homeowners, that figure is 52%².



When asked “what could your CIC do better in being more transparent during regular board, executive/closed board, and annual meetings?” the Division received feedback such as “Not be so secretive in general¹”. When asked “what steps would you like your CIC and/or Community Association Management Company to take to improve transparency?”, the Division received feedback such as: “Stop hiding things from homeowners and being so shady in business dealings and secretive activities¹”.

Stakeholder feedback appears to indicate a general mistrust for CICs in regards to their conduct of open and transparent meetings. This recommendation aims to encourage a more open and transparent environment for meetings, which would likely improve community trust and support greater involvement. It should be noted that the Colorado Nonprofit Act contains permissive language regarding written or “secret” ballots. This language would have to be amended or language in any potential future regulation would need to include a “notwithstanding” provision.

v. Allow the use of independent election monitors if requested by an owner and paid for by the requestor.

More than half of respondents to the HOA Survey disagreed with the statement “Are your elections conducted properly and fairly⁵?” When asked about their level of agreement with the statement “My CIC properly follows its governing document procedures and the CCIOA law regarding its election and voting process”, 35% of respondents to the Survey felt neutral towards or disagreed with the statement¹. Amongst those respondents who identified as homeowners, that figure is 54%².

In asking for general feedback regarding elections, the Division received several comments such as “...use fair election procedures”; “Hold a more democratic election for filling board positions”; and “Quit using total proxy for elections¹.”

By allowing members to utilize and personally fund independent election monitors, CICs would likely reduce the amount of mistrust which currently exists in many communities regarding the veracity of elections. Since elections form the basis on which CICs operate, this recommendation may be a simple way to strengthen trust and reinforce electoral confidence.

vi. 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 appropriate.

Nearly 50% of respondents to the HOA Survey disagreed with the question “Does your HOA provide adequate notice of meetings⁵?” Although close to 70% of respondents to the Survey agree that their CIC provides adequate notice of any upcoming board or annual meetings, amongst those respondents who identified as homeowners, that figure is only 58%^{1,2}.



Some of the comments received by stakeholders regarding notice of meetings include statements such as “Go above & beyond required notice procedures”; “No notice of HOA meetings”; and “Reduce the number of required print, print [sic] and mail notices versus electronic, including allowance for online elections or voting¹.”

If members had the opportunity to receive notifications of meetings on a continual basis, overall participation in governance may improve. Many attendees to the stakeholder meetings focused their feedback on the perceived lack of communication from CICs to their members. This recommendation may be an uncomplicated way to encourage CIC meeting attendance.

vii. 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 address.

In response to the question “Does your HOA communicate effectively with you?” 74% of respondents to the HOA Survey disagreed⁵. Nearly a third of respondents to the Survey felt neutral towards or disagreed with the statement “My CIC utilizes a website or other similar mechanism for transparency and ease of access to association records, such as governing documents, current meeting minutes, and financials¹”. Amongst those respondents who identified as homeowners, that figure is 45%².

Several comments were submitted to the Division regarding electronic notices, such as “Send by email notices of meeting and other information”; “More timely posting of minutes, financials, etc.”; and “Post records to the community website immediately as they are available¹.”

In today’s increasingly digital landscape, encouraging the provision of notices by electronic means is an effective way to increase the information disseminated regarding CIC activities. It also serves as a persuasive method of motivating members of CICs to participate in the governance of their community.

viii. An owner may record any portion of a meeting required to be open.

When asked the question, “Does your HOA conduct its business openly and transparently?” 73% of respondents to the HOA Survey disagreed⁵. Some of the feedback received from stakeholders include the statements “We not only need transparency but accountability, as well, at the HOA and CAM level”; “CCIOA lacks enforceable safeguards to protect homeowners from insufficient transparency”; and “Over the years, I have experienced a number of transparency issues¹”.

Allowing members to record any portion of a meeting that is required to be open would foster an air of transparency and openness that many stakeholders are asking for. In order to become more transparent, CICs will need to remove actual and perceived obstacles to information and processes, including any barriers to recordkeeping.



Recommendations regarding methods to reduce costs and improve the transparency of HOA fees and fee schedules.

The costs associated with living in a CIC in Colorado can vary significantly. The variables which affect the cost of living in a CIC include, but are not limited to the location of the CIC, the level of services provided by the CIC, the type of management, the type and amount of insurance coverage, as well as any pending litigation.

The Division asked stakeholders what steps they would like their CIC to take to improve transparency. In response, stakeholders provided comments such as “Make the existence of Status Letter and Transfer Fees more apparent”; “Establish low fees for documents” and “Provide homeowners documents required for home sale for a reasonable fee¹”.

i. 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 CIC.

The majority of respondents to the HOA Survey disagreed with the statement “Does your HOA conduct its business openly and transparently⁵”. More than a third of respondents to the Survey said they felt neutral towards or disagree with the statement “My CIC undertakes audits of its financial affairs¹”. Amongst those respondents who identified as homeowners, that figure is 38%².

In discussing the issue of audits and reserve financials with stakeholders, the Division received feedback such as “Provide financial information and all audit reports to homeowners”; “[Need for] compliance with a reserve study - and disclosure of % of reserve study funded”; and “We also frequently encounter issues where communities are not appropriately funded according to their reserve study¹”.

Although annual audits may be viewed as an additional cost for some communities, the costs associated with obtaining a loan to cover expenses which have not been budgeted for, or worse, incurring expensive repair costs due to the inability to keep up with regular maintenance would likely cost far more. The Division does not have any data regarding the number of HOAs that currently conduct annual audits.

ii. 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:

- *At least annually, review the results of that study to determine whether those reserves are sufficient; and*
- *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 reserves.*



In response to the statement “Do you feel that your HOA has sufficient financial reserves to handle future problems?” nearly two-thirds of respondents to the HOA Survey stated they felt neutral or disagreed⁵. This appears to suggest that many respondents do not have confidence in their CIC’s ability to handle circumstances of financial stress, which would necessitate a properly financed reserve fund.

In regards to the adequacy of CIC reserve funds, almost a third of respondents to the Survey said they disagreed with the statement “my CIC maintains an adequate amount of reserve funds”, or they stated they didn’t know¹. Amongst those respondents who identified as homeowners, that figure is 39%². Again, we are seeing a trend of respondents reporting that they are unaware of the sufficiency of their CIC’s reserve fund.

Some of the comments received relating to CIC reserve funds include statements such as “Force CICs to fund reserve’s at 85% of their Reserve Study”; “Improve accounting practices and a proper reserve study done”; “Use the reserve study to help determine budget”, and “Some communities do not have appropriate reserves for future expenses^{1”}.

Since the cost of a reserve study may be prohibitive for smaller communities, a threshold limit could be established which would exempt certain CICs with few units or small budgets. Providing an exemption to smaller CICs would limit any unintended impact on those communities who may not benefit from a reserve study while protecting homeowners in larger communities, where the result of a reserve study and a properly funded reserve account would be most beneficial.

iii. 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 fees.

More than a third of respondents to the Survey said they disagreed with the statement “The level of communications coming from my CIC regarding costs, fees and expenditures is sufficient^{1”}. Amongst those respondents who identified as homeowners, that figure is 55%². Approximately 30% of respondents to the Survey disagreed with the statement “I understand the fees being charged by my Community Association Manager in connection with the services they provide^{1”}. Amongst those respondents who identified as homeowners, that figure is 45%².

The Division sought feedback regarding improving transparency. In response, stakeholders provided comments such as “Provide a table of fees for transfer fees, record change fees and status letters”; “Make available...how much it will cost to obtain documents necessary for due diligence before I purchase a property governed by a CIC”; “Have everything available for viewing and stop the exaggerated fees” and “Fees and expenses for those who are selling their home, these should be visible to all prospective buyers, sellers and the general public^{1”}



The fees charged at closing relating to CICs vary substantially and the names of the fees charged by CAMs can differ as well. According to Association Online, “an independent, national service and solutions provider to the real estate industry⁶”, “There is [a] clear lack of transparency in all aspects of pricing in the HOA oversight industry, but especially in relation to the document and data transfer market¹”. Although section 7.3.5 of the Colorado Real Estate Commission’s Contract to Buy and Sell form already requires disclosure of many CIC fees, a central repository would allow all consumers to shop for the best overall price.

iv. Mandatory Board Member education. The HOA Center would provide education to Board Members on its website (i.e. governing documents, governance, budgeting, reserve studies). Evaluate exemption for CICs with 25 units or less.

Over two-thirds of respondents to the Survey said they agree with the statement “Board Members should be required to undertake mandatory education concerning the CCIOA and related laws that affect the association¹”. Amongst those respondents who identified as homeowners, that figure is 79%². For those who identified as Board Members, that figure is 55% and for those who identified as CAMs, it is 57%².

Some of the feedback the Division received regarding Board Member education include comments such as “Make sure the volunteer Board Members clearly understand and live up to obligations. Have them undergo minimal 'board training' and sign off that they understand their fiduciary responsibilities as board members” and “Generally their [sic] is a lack of understanding among homeowners and board members regarding how exactly their community should or does operate so education of homeowners and board members is key to changing the game¹”.

Until recently, the majority of Boards for CICs have been comprised of volunteers, as the Community Association Manager Act prohibited receiving compensation for many activities associated with Board Membership without a license. Subsequent to licensing, many if not most Board Members are still volunteers, however, with the restrictions on compensation repealed, some CICs may choose to remunerate their Board for their time.

Although mandatory education requirements may discourage some homeowners from volunteering as a Board Member, greater understanding of the law and process will likely translate into more responsible and effective Board Members.

v. Mandatory minimum number of bids regarding projects over a certain dollar amount.

Respondents to the HOA Survey were asked “Is the board free of conflicts of interest?” Nearly 63% said they disagreed⁵. More than half of the respondents to the HOA Survey also disagreed with the statement “Is the manager free of conflicts of interest?⁵”

Some of the statements from stakeholders regarding the bidding process included comments such as “Competitive Bidding on projects and maintenance”; “establish guidelines for securing service providers to ensure competitive bids for vendors”; “getting more bids for

⁶ Association Online. *Why AO?* Retrieved November 27, 2019, from <http://www.associationonline.com/why-ao>



work”; “Require multiple bids for all contracts with vendors” “take more bids” and “provide estimates and multiple bids for contracts¹”.

Conflicts of interest are present in every industry. Currently, CCIOA requires that CICs create a responsible governance policy regarding the handling of conflicts of interest involving board members. Circumstances that call for special projects are when the issue of conflicts of interest frequently arise; the need for vendors occur and bids are sought.

Requiring a minimum number of bids increases the options presented to the Board and reduces the ability to only use preferred vendors, which may not be of the highest quality or provide the greatest level of service. Some stakeholders suggested that there may be some value placed on preferred vendors, since experience with certain vendors may lend credibility to their services and create a more efficient process for the CAM and CIC. However, a minimum bid requirement would not prevent the selection of a preferred vendor, just require them to take part in the bidding process.

Recommendations regarding strategies to promote homeowner rights and consumer protections through an evaluation of the Colorado Common Interest Ownership Act and other related acts or rules

Close to 20% of respondents to the Survey stated that their CIC had no policy for alternative dispute resolution to resolve disputes between homeowners and the association¹. Of those respondents, more than half said they’d prefer their CIC to implement a policy regarding mediation as well as arbitration¹.

i. 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.

More than half of respondents to the HOA Survey agreed that professional mediation would be helpful in handling disputes within their CIC⁵. Almost 60% of respondents to the HOA Survey said an out-of-court CIC dispute resolution process would be helpful⁵.

Association Online reports that although “The dispute resolution policy is a required resolution under 38-33.3-209.5. We find that many associations are missing all or most of these required policies, including this one¹.” Many stakeholders agree that the current CCIOA provision requiring a dispute resolution policy is not enough. The Community Association Management Company, Associa, provided feedback on the issue, stating “There is [an] opportunity for the state to consider enhancing penalties for violations of governing documents and the CCIOA, but a remaining challenge is determining who or what government entity should be empowered to investigate and resolve disputes and violations¹.”

