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Self-Managed HOA Guidelines

Thank you for joining us, the presentation will begin shortly.

Self-Managed HOA Guidelines

The purpose of this presentation is to provide some tips, guidelines, and considerations for self-managed associations, or associations that are considering switching to being self-managed.



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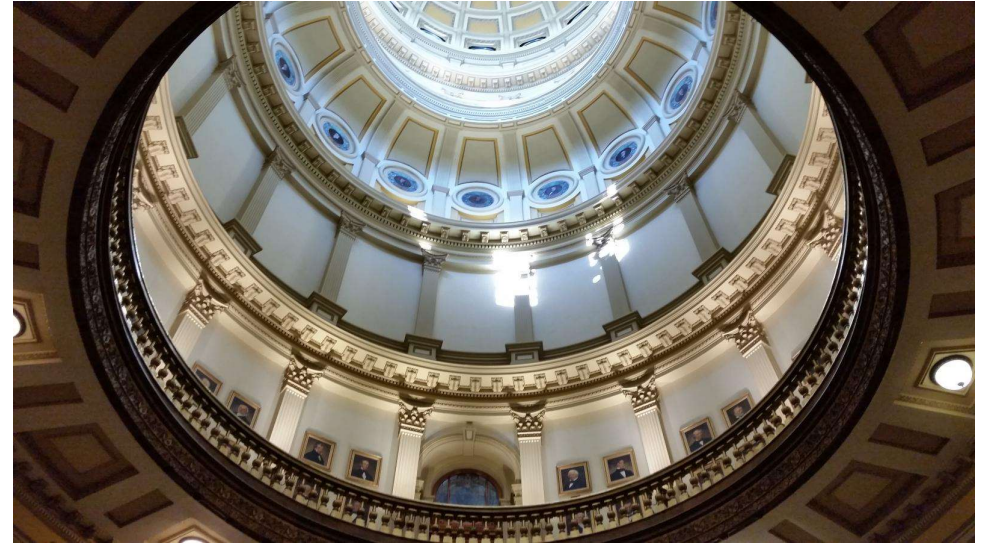
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HOA Information
&
Resource Center

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Disclaimer:

The information provided during this presentation is for educational purposes only and is not meant to provide, nor should it be construed as legal advice.

Any legal questions should be directed to a qualified Colorado attorney.



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What Is the HOA Information & Resource Center?

Created in 2011, as a part of the Division of Real Estate, the HOA Information & Resource Center's Vision Statement is to navigate the landscape of real estate regulation through collaboration, transparency and equity.

- What the HOA Information & Resource Center does:
 - Provides information to homeowners regarding their basic rights and responsibilities under the Colorado Common Interest Ownership Act ("CCIOA").
 - Gathers, analyzes, and reports information through complaints and HOA registrations;
 - Creates resource materials;
 - Provides education and forums;
 - Provides a website with information for the public;
 - Registers HOAs pursuant to §38-33.3-401(1), C.R.S;
 - Provides an Annual Report to the Legislature.
- What the HOA Information & Resource Center does not do:
 - Is **not** a regulatory program.
 - Does **not** mediate/arbitrate.
 - **Cannot** provide legal advice.
 - Does **not** act as an advocate.
 - **Cannot** assess fines or penalties.
 - Does **not** enforce an HOA's failure to register.



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Who Is This Presentation For?

- Board Members
- Community Managers



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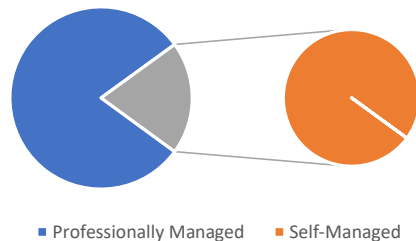
Self-Managed Communities-A Small Minority

The HOA Center collects data through mandated registrations (See C.R.S. §§ 38-33.3-401, *et seq.*) on whether associations are either self-managed or professionally managed:

- At the end of 2021, Colorado had 6,390 actively registered associations that were professionally managed and 1,622 actively registered associations that were self-managed.
- Stated another way, almost 80% of the actively registered associations in Colorado are professionally managed. **20% are self-managed.**

Note: Many associations could be identified as having a “hybrid” management. This occurs when the board delegates some specific responsibilities but retains its remaining responsibilities. When deciding, each board should consider what skill set it has.

Professionally Managed vs. Self-Managed



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Community Association Managers

Community Association Managers (“CAMs”) are not licensed in Colorado. In the past, association boards could rely on the fact that CAMs were licensed and regulated by the State. **This is NO LONGER the case.**

- From January 1, 2015-June 30, 2019, CAMs were subject to a licensing program.
- HB19-1212 would have renewed the CAM program for one additional year but was vetoed.
- A bill was proposed in 2020 which would have created a robust dispute resolution program for HOAs and would have been administered by the Division of Real Estate. The language in that bill was removed. See HB20-1200.
- In 2022, another bill was introduced to regulate CAMs but also, this bill failed and was postponed indefinitely. See HB22-1239.



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Guidelines For Self-Managed Community Success

Success in every community might look different.

Here are a few general rules that will increase the likelihood of success in your community:

1. Put the community first!
2. Communicate with unit owners.
3. Develop and share a vision for the community with your fellow board members and unit owners.
4. Run the association like a business! This means act professionally, do not act on emotion, enforce rules uniformly, maintain records properly, and share records with unit owners.



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Reasons to Self-Manage

Different associations may have different reasons to be interested in self-management:

- Community Size
- Remote Location
- Frustration with Current CAM
- Save Costs
- Independence
- Freedom of Choice



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Considerations for Self-Managed Communities

- What are the Duties for a Board Member?
- What are the Qualifications for Board Members?
- Can Board Members Be Compensated?
- What Liability Is There For Board Members?
- What Are the Time Commitments?



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Duties for Board Members- **Act Reasonably for Community Benefit**

Duty of Care: a board member must exercise a reasonable standard of care

Duty of Loyalty: a board member must place the association's interest before their own

Duty of Due Diligence: a board member must conduct themselves in a manner of an ordinarily prudent or reasonable party to avoid harm to another party or themselves

Duty of Reasonable Care: a board member must exercise reasonable care when making decisions on behalf of the association

Duty of Confidentiality: a board member must restrict access to confidential documents to protect the interests of the association

Duty to Be Free of Conflict of Interest: a board member should avoid conflicts of interest

ACT AS A FIDUCIARY FOR THE COMMUNITY!



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Qualifications for Board Members

-The Colorado Nonprofit Corporation Act speaks to the qualifications of directors, but only briefly: A director shall be an individual. See C.R.S. § 7-128-102.

-CCIOA does not specify any qualifications for board members.

-**Where do association members find qualifications?** *Answer: The Association's Bylaws.*

- Many associations require board members to be owners within the community.
- Some associations require board members to reside within the community.
- Some associations will require board members to be in good standing (meaning they are current in their payment of assessments, and otherwise in compliance with the association's governing documents).
- Review your association's documents carefully.



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Board Members Compensation

-The Colorado Nonprofit Corporation Act does allow for board of director members to receive compensation, but your association's governing document MUST expressly allow for compensation. The vast majority of associations call for a VOLUNTEER BOARD.

-Here are some considerations for board members. Check to see if your governing documents allow:

- **Direct Compensation**: payment of an hourly rate, monthly rate, annual rate?
- **Indirect Compensation**: payment for services the board member provides outside of the direct board services (i.e. board member is a plumber, landscaper, etc. and contracts with the board to provide those services to the association). Is this a Conflict of Interest? Check your governance policies.
- **Expense Reimbursement**: many times, but not all, governing documents allow for reimbursement for board related expenses.
- **Purchase & Sale of Personal Property**: like Indirect Compensation, governing documents commonly prohibit private transactions between board members and associations (i.e. association wants to sell a power washer to board member). Check your governance policies for conflicts of interest.

-Before the association compensates a board member, check with your attorney and insurance agent, as it could affect your insurance coverage.



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Liability for Board Members

CCIOA § 38-33.3-303(2) generally protects board members from personal liability, with a few exceptions:

- If a board member was appointed by the declarant, in the performance of their duties, the officers and members of the executive board are required to exercise the *care required of fiduciaries of the unit owners*.
- If a board member was NOT appointed by the declarant, no member of the executive board and no officer shall be liable for actions taken or omissions made in the performance of such member's duties *except for wanton and willful acts or omissions*.



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Liability for Board Members

With regard to the investment of reserve funds, CCIOA § 38-33.3-303(2.5) states that board members shall discharge their duties:

- In good faith
- With the care of an ordinarily prudent person
- In a matter believed to be in the best interests of the association



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Time Commitments for Board Members

- Different communities require different time commitments. When contemplating the time commitments for your association, consider:
 - size of the property
 - age of the property
 - type of amenities
 - number of units/parcels
- Assume that any commitment to the board will require at least several hours per week, but could be much more.
- Find dates and times when all the board can work together. When can the board meet for formal board meetings?
- **Emergency Contacts**: Your association may have certain common elements that could have foreseeable emergencies (i.e. an elevator, a major leak, broken heater or boiler). To help save time, Self-Managed boards should have a contact list for common elements such as these to be prepared for emergencies.



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Pro-Tips (part one)

1. Maintain a complete written record of board action. Usually, this can be done through accurate and complete meeting minutes and resolutions. *Save all emails between board members and to unit owners.*
2. Maintain a complete written record of financial transactions.
3. Self-Managed does NOT mean, the board has to do everything. The board is not expected to do the landscaping. The board is not expected to re-roof the building. Colorado law allows for the board to contract with 3rd parties. **Hybrid Management is acceptable, legal, and might be a great idea.**
 - A. What is expected of the board is for the board to know what they can do and cannot do.
 - B. For example, if time or expertise do not allow for the board to accurately maintain HOA accounting books, the board can contract with a bookkeeper or accounting firm to fill in the holes where the board cannot-delivering invoices, processing status letters, processing payments and processing bills.



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Pro-Tips (part two)

1. *Know when you need help and reach out.* Consultation with experts: lawyers, accountants, insurance brokers is allowed and encouraged.
2. *Use the resources of the community.* Boards are permitted to establish committees. Committee members are unit owners in the community. Committees can help with many aspects of the community: Architectural Review, Communications/Newsletter, Landscape Design, Environmental, Fire Mitigation, etc.
3. **MOST IMPORTANTLY:** *Just because the community has done something a certain way in the past **does not mean that that is the right way, or the only way.*** Changes to the law, changes to community culture, changes to technology sometimes lead to the decision that the community needs to change. The board can and should review their governing documents to address changes to more effectively communicate with owners and stay in compliance.



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Need More Resources?

Visit our Information for Boards & Members
of Self-Managed HOAs website at:

<https://dre.colorado.gov/understanding-self-managed-hoas>



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Questions?





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HOA Information & Resource Center

Check Out HOA Resources For Yourself At:

- Web: <https://dre.colorado.gov/hoa-center>
- Send Inquiries Via E-mail To: dora_dre_hoainquiries@state.co.us