

Dispute Resolution In Your Communities

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



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Dispute Resolution In Your Communities

The purpose of this presentation is to provide a general background on dispute resolution, hearings with board members, and Alternative Dispute Resolution (“ADR”).



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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 attorney licensed in Colorado.



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What Is the HOA Information & Resource Center?

- 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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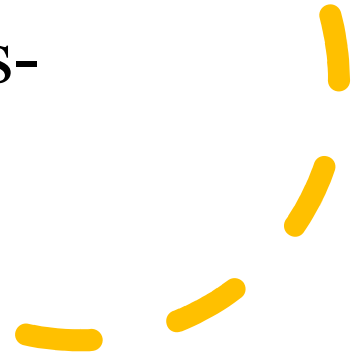
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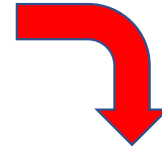
**Who Is This
Presentation
For?**

-Home Owners-
-Board Members-



Dispute Resolution Generally

Dispute Resolution in your communities can take many forms,
so there is no one-size-fits-all approach, but start here:



-Read all of your governing documents. Specifically, § 38-33.3-209.5(1)(VIII) requires that all associations adopt policies and procedures for addressing disputes arising between the association and unit owners and lends support to the idea that associations and homeowners should engage in Alternative Dispute Resolution (“ADR”) as an effective means of resolving differences.

-Document Your Issues. Write them down, keep a log of communications and actions.

-Discuss your concerns with other like-minded community members. Associations thrive when members use the democratic process to make changes within the community.



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Dispute Resolution Generally

What is Next?

- Request information from your association's board.*** If you do not have the governing documents, request them. If your board has a procedure to request information or a design variance, read the policy and follow the policy when requesting.
- Attend an association meeting.*** There are two primary types of meetings: Board Meetings and Unit Owner Meetings. Request time on the agenda or speak during any “New Business” portion of the meetings.
- Share your concerns and questions with the community.***
- Request a hearing with your association's board.***
- Request Alternative Dispute Resolution: Mediation or Arbitration.***
- File A Lawsuit.***
- File a Complaint With the Division of Real Estate.***



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Board Hearings With Unit Owners

All associations are required to develop certain governance policies and these policies are required to allow unit owners an opportunity for a hearing. See § 38-33.3-209.5, C.R.S. **Follow this policy.**

-In writing, a unit owner should request a hearing by contacting the association board or Community Association Manager.

-Upon receipt, boards should confirm the agenda and notify the unit member that they will have a hearing. Note that this hearing is open to other unit members who are in attendance at the meeting.



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Alternative Dispute Resolution (“ADR”)

Alternative Dispute Resolution (“ADR”) is an umbrella term which usually includes:

1. Mediation; and
2. Arbitration.

Colorado law does not mandate that disputing parties submit their claims to ADR, ***but does encourage it***. See § 38-33.3-124, C.R.S.

Mediation

Mediation can be conducted in a variety of ways:

Face To Face Mediation. Across the table negotiations with an independent third party (the “Mediator”)

Shuttle Mediation. One party is in one room and another party is in another room and the Mediator shuttles back and forth between the parties so that the parties can be frank and honest and the Mediator can help the parties to find common ground, better understand the law, and reach an agreement.

Zoom Mediation/Mediation From Home. For those of you living in more remote parts of the state, many mediators have adjusted their practice to securely conduct mediation on video conference (like Shuttle Mediation).



Mediation-Benefits

- Maintains important and meaningful relationships within the community-
- Allows the opinions and issues of the community members to be heard-
- Less Formal-it is talking, not arguing, and less controversial-
- Confidential-discussions and positions shared with the mediator are not admissible in Court, allowing parties to speak frankly and honestly-

If mediation is unsuccessful, arbitration and court proceedings are still available to the parties.



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Mediation-Negative Aspects

-**Not binding**. If you mediate all day, you might still walk out of mediation no closer to a resolution than at the start of the day.

-**Not Required**. Unless your association's Governance Policies (see § 38-33.3-209.5 of CCIOA) require mediation, the parties do not have to submit their dispute to mediation. *However, if you find yourself in a lawsuit down the road, it is common that a judge will order the parties to mediate in good faith. With this in mind, it is a good idea to consider mediation in lieu of running to the courthouse at the first sign of a dispute.*



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Mediation-Who Do I Mediate With?

- In Colorado, there is no license to be a mediator, but there are training courses and certifications available.
- In choosing any mediator, discuss their qualifications and their knowledge of Community Association Law.
- The following organizations are reliable sources to find a qualified and, in some cases, low-cost mediator:
 - Office of Dispute Resolution - www.coloradoodr.org
 - Colorado Bar Association - www.cobar.org
 - The Mediation Association of Colorado - www.coloradomediation.org



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Arbitration

Employment Agreements, Mobile Telephone Provider Agreements, and many more industries use arbitration to resolve disputes.

Although there is no statutory requirement that association disputes be resolved by arbitration, the parties could mutually agree to submit the dispute to arbitration.



Arbitration

Arbitration is Formal:

- Legal Arguments;
- Exhibits;
- Witnesses-direct examination and cross-examination; and
- Rules of Evidence



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Arbitration-Benefits

- Generally, less expensive than litigation.
- Faster (timeline from filing the claim until an Arbitration Award is usually much shorter than court).
- While formal, the hearing is usually held in an office, rather than in the pomp and circumstance of a courthouse.



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Arbitration-Negative Aspects

- Formal**. The parties are expected to make legal arguments, present evidence and testimony, cross-examine witnesses and are subject to Rules of Evidence.
- Adversarial**
- Arbitration Award is an Order**. If one party does not like the award, the matter can be “appealed” to the court system, where the process can be litigated again.
- You are hiring a non-judge to act and make decisions like a judge**. Some might argue that you might as well just go to court so that you have a judge making these decisions.
- While less expensive than court, more expensive than mediation**.



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Litigation

Colorado has three levels of trial courts, and two levels of appellate courts.

Initial Disputes can be filed in: (a) Small Claims Court, (b) County Court, and (c) District Court.

Litigation-Benefits

- Closer to Final Decision. Although a court order can be appealed, statistically, the vast majority of trial orders are upheld by appellate courts.
- Possibility of the award of legal fees. Colorado law provides that the prevailing party may be awarded their attorney's fees. Candidly though, this could be a negative for litigation as well.



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Litigation-Negative Aspects

- Expensive*
- Formal Rules of Evidence and Procedure*
- Slow*. Depending on the court's docket, it could be months or more before you have your "Day In Court."
- Adversarial*



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Division of Real Estate Complaint Process (Elephant In The Room)

The HOA Information & Resource Center accepts complaints against association boards and Community Association Managers.

-We receive hundreds of complaints each year:

2020: 960 complaints

2021: 695 complaints

The nature of these complaints range significantly but tend to relate to transparency and communication within communities.

-What Do We Do With These Complaints?

Complaints

The HOA Information & Resource Center does not have:

1. Investigatory authority
2. Enforcement authority



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Complaint Process

For every complaint, the HOA Information & Resource Center:

- Carefully reviews the nature of the complaint and categorizes each complaint for tracking;

- When possible, the HOA Center also replies to the Complainant to:

1. Acknowledge receipt of the Complaint, and
2. To provide a response with guidance to the Complainant about what options might be available.

- In addition, the HOA Center creates a detailed annual report for the Colorado General Assembly (and is viewable by the public).



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So Why Complain To the Division of Real Estate?

- If you are an unhappy homeowner that feels like you board is not satisfying its responsibilities;
- If you think your Community Association Manager would benefit from training requirements;
- If you believe that private corporations should not be regulated;

File a complaint. The HOA Center has an easy-to-use complaint process. Your concerns will be conveyed to the Colorado General Assembly. Also, you can contact your State Representative and State Senator and share your concerns with them directly.



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Pro Tips

1. *Escalate Matters As Necessary:* If you have informally attempted to resolve a dispute, escalate your communications: (a) deliver a letter certified letter with return receipt requested, → (b) request a hearing, → (c) request mediation, or → (d) move to file suit.
2. *Remain Professional:* No matter your position, consider your communications as if they would be an exhibit used against you in court. What would a judge or jury think about the language you use? (a) remaining professional, (b) sticking to the facts, (c) explaining carefully and clearly your position, and (d) imposing deadlines to receive a response are all best practices.
3. *Consult with competent counsel:* You may choose to retain an attorney ***at any point in the process*** based on your own comfort level, understanding of the governing documents and the law, and ability to advocate for yourself.



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Make Your HOA Life Easier With All Sorts of HOA Information

1. Registration
2. Documents
3. Meetings
4. Elections
5. Budgets
6. Reserve Funds/Reserve Studies
 7. Record Retention
 8. Governance Policies

Need More Resources?

Visit Our Board Member Education Platform
at:

<https://dre.colorado.gov/hoa-board-member-education>



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Questions?



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



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