

HOA Information & Resource Center

Presented By:

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1560 Broadway, Ste. 925, Denver, Colorado 80202





COLORADO

Department of
Regulatory Agencies

Division of Real Estate

*HOA Forum: Discrimination
and your Community, with
special guests Kelly
Wesolosky and Richard
Forney of the Colorado
Division of Civil Rights.*

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?”

We:

- Provide information to homeowners regarding their basic rights and responsibilities under the Colorado Common Interest Ownership Act (“CCIOA”).
- Gather, analyze, and report information through complaints and HOA registrations.
- Create resource materials.
- Provide education and forums.
- Provide a website with information for the public.
- Register HOAs pursuant to §38-33.3-401(1), C.R.S.
- Provide an Annual Report to the Legislature.

We do NOT:

- Regulate HOA's
- Mediate/Arbitrate.
- Provide legal advice.
- Act as an advocate.
- Assess fines or penalties.
- Enforce an HOA's failure to register.



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Who Is This Presentation For?

- Home Owners
- Board Members
- Community Association Managers
- Lawyers
- Tenants
- The General Public
- Anybody Interested in Common Interest Communities



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What is the Colorado Anti-Discrimination Act (“CADA”)?

- C.R.S. § 24-34-301, et seq.
- “CADA” prohibits discrimination based on protected class in employment, housing, and places of public accommodation.
- Enforced by the Colorado Civil Rights Division (“CCRD”)



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Regulatory Information

The CCRD enforces the Colorado Anti-Discrimination Act (CADA). CADA can be found in parts three (3) through eight (8) of Colorado Revised Statutes (C.R.S.) Title 24, Article 34 starting at section 300. Additionally, CCRD refers to the standards and guidance set out in the State of Colorado Civil Rights Commission Rules and Regulation, found in the [Code of Colorado Regulations](#).

Specific CADA parts:

- **Part 3** - *Colorado Civil Rights Division - Commission - Procedures*: C.R.S. § 24-34-301 et seq.
- **Part 4** - *Employment Practices*: C.R.S. § 24-34-401 et seq.
- **Part 5** - *Housing Practices*: C.R.S. § 24-34-501 et seq.
- **Part 6** - *Discrimination in Places of Public Accommodation*: C.R.S. § 24-34-601 et seq.
- **Part 7** - *Discriminatory Advertising*: C.R.S. § 24-34-701 et seq.
- **Part 8** - *Persons With Disabilities - Civil Rights*: C.R.S. § 24-34-801 et seq.



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Where can I
go to look at
the C.R.S.
(Colorado
Revised
Statutes)?

- <https://leg.colorado.gov/agencies/office-legislative-legal-services/colorado-revised-statutes>
- Hosted by LexisNexis



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Who Do Fair Housing Laws Apply To?

While it is commonly thought that these laws apply to housing providers (such as landlords), they also apply to real estate professionals such as:

- Real Estate Brokers
- Community Association Managers (CAM's)
- Mortgage Loan Originators (MLO's)
- Appraisers
- Homeowner Associations (HOA's)



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Kelly Wesolosky

Outreach, Education, and Community Advisor

Richard Forney

Outreach and Education Coordinator



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Colorado Civil Rights Division

Charged with enforcing the Colorado Anti-Discrimination Act (CADA)

Intake and Investigation
Alternative Dispute Resolution
Community Outreach and Education

The manner in which cases are processed is dictated by statute and/or administrative rules:

ccrd.colorado.gov/regulatory-information

Staff of 44

www.governmentjobs.com/careers/colorado

For fiscal year 2022, the Division received over 1,500 complaints of discrimination.



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Colorado Civil Rights Commission

The CCRC is seven-member bipartisan panel appointed by the Governor and confirmed by the state Senate.

- Selected from various regions across state
- Represent both political parties
- Four Year Terms
- Hears appeals of cases dismissed by the CCRD for lack of probable cause.
- Has the authority to set cases for hearing
- Can pursue probable cause cases through litigation if they do not settle through conciliation.

Monthly public meetings are being held the fourth Friday of every month (meeting links on <https://ccrd.colorado.gov/>)



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Key Definitions

Fair Housing- CADA

“Housing”

Any building, structure, vacant land, or part thereof offered for sale, lease, rent, or transfer of ownership;

C.R.S. § 24-34-501 (2)



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Exemptions to CADA

Excluded from FHA “Housing” Definition

Single Family Homes: Single Family homes exempt if private individual owns no more than 3 single family homes.

Housing for Older Persons: Exempts housing only from Familial Status provision



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Housing Discrimination

CADA; Title VIII, ADA, Section 504-RA

Fair housing laws apply to housing providers (landlords), but also real estate brokers, mortgage lenders, homeowner associations, and others.

Housing discrimination occurs when a provider subjects a member of a protected class to disparate, unfavorable treatment because of that individual's "protected class."



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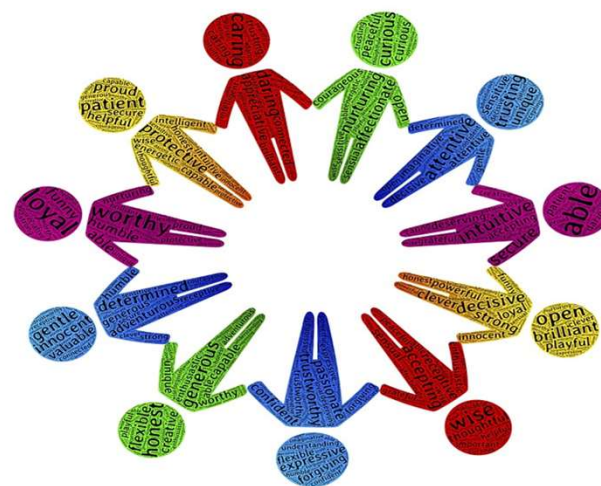
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Protected Classes

Housing Discrimination

It shall be an unfair housing practice and unlawful and hereby prohibited [to discriminate in housing] **because** of:

- Ancestry/National Origin
- **Color/Race**
- Creed/Religion
- **Disability (mental/physical)**
- Familial Status
- Marital Status
- Sex
- Gender Identity/Gender Expression
- Sexual Orientation
- **Source of Income (2021)**
- **Veterans and Military Status (2022)**





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Disparate Impact

A housing practice/policy that is:

- **Facially neutral** (intentional motivation not required)
- **Disadvantages** members in a protected class more than those from another class
- **Adverse impact** can often be supported by statistical evidence. Need not be intentional or motivated by animus/bias.



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Disparate Treatment

Involves **intentional** discrimination

Proven through direct, circumstantial, or statistical **evidence**

Prima Facie Case

- ☐ Complainant is member of a **protected** class
- ☐ Complainant suffered a **negative** action
- ☐ Complainant was treated **differently** than similarly situated tenants not in the same protected group



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Jurisdiction

Nexus:

a connection or series of connections linking two or more things.: "the nexus between industry and political power".

**Discriminatory
Act**



**Protected
Class**



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Discriminatory or Unfair Housing Practices

- Refusal to rent/sell (make housing “unavailable”)
- Misrepresent availability
- Apply unequal terms or conditions of sale or rental
- **Refusal to allow reasonable accommodation/
modification necessary to accommodate a disability.**
- Redlining
- Steering
- Intimidation, Threaten/Coerce (Harassment)
- Advertise with a discriminatory preference or limitation
- Retaliation





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Federal Law Considerations

CCRD is a “Fair Housing Assistance Program” (FHAP)



U.S. Department of
Housing and Urban Development

- Work-sharing agreement with HUD allows cases to be referred/deferred because the laws are substantially similar
- Dual Jurisdiction
- 1 Year with HUD and CCRD
- HUD protections vary in some areas - e.g. [sex/sexual orientation/gender identity and expression], source of income
- Division cannot, and will not, enforce federal law - See C.R.S. § 24-34-308
- www.hud.gov/program_offices/fair_housing_equal_opp



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Anti-Discrimination Notices

3 CCR 708-1

ccrd.colorado.gov/regulatory-information

- Housing providers and lenders are **required** to post a notice that summarizes prohibited discriminatory or unfair housing practices.
- The notice must be conspicuously posted on website, common places, locations where transactions occur.
- All notices available in English, Spanish, Arabic, Filipino, Vietnamese, Mandarin, Amharic (website or hard copy)*



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Colorado Law Prohibits Discrimination in: **HOUSING** C.R.S. § 24-34-501 et seq.

IT SHALL BE A DISCRIMINATORY OR UNFAIR HOUSING PRACTICE:

For any person to REFUSE TO SHOW, SELL, TRANSFER, RENT, or LEASE, or REFUSE to RECEIVE and TRANSMIT any bona fide offer to buy, sell, rent, or lease, or OTHERWISE MAKE UNAVAILABLE or DENY or WITHHOLD FROM any person housing; or to discriminate in the TERMS, CONDITIONS, or PRIVILEGES pertaining to any housing.

BECAUSE OF:

DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION (including TRANSGENDER STATUS), RELIGION, MARITAL STATUS, FAMILIAL STATUS, NATIONAL ORIGIN or ANCESTRY, or SOURCE OF INCOME*

REASONABLE ACCOMMODATIONS FOR DISABILITIES:

A person with a disability is entitled to a reasonable accommodation(s) and/or modification which is necessary to allow the person full and equal enjoyment of housing. An accommodation is not reasonable if its provision would result in an undue financial and administrative burden or a fundamental alteration of the housing provider's operation.

ASSISTANCE ANIMALS:

Assistance animals include service animals and emotional support animals and are one form of a reasonable accommodation in housing. A person with a disability may request, as a reasonable accommodation, an exception to a no pet policy, or a policy that would otherwise prohibit their assistance animal from residing in their home.

Service animals are designated as a dog or miniature horse that are individually trained to perform task(s) or work related to a disability. Examples include a guide dog or medical alert dog.

Emotional support animals may be any type of animal that provides a therapeutic effect to alleviate a mental impairment.



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Complaint Process

Intake

Investigation

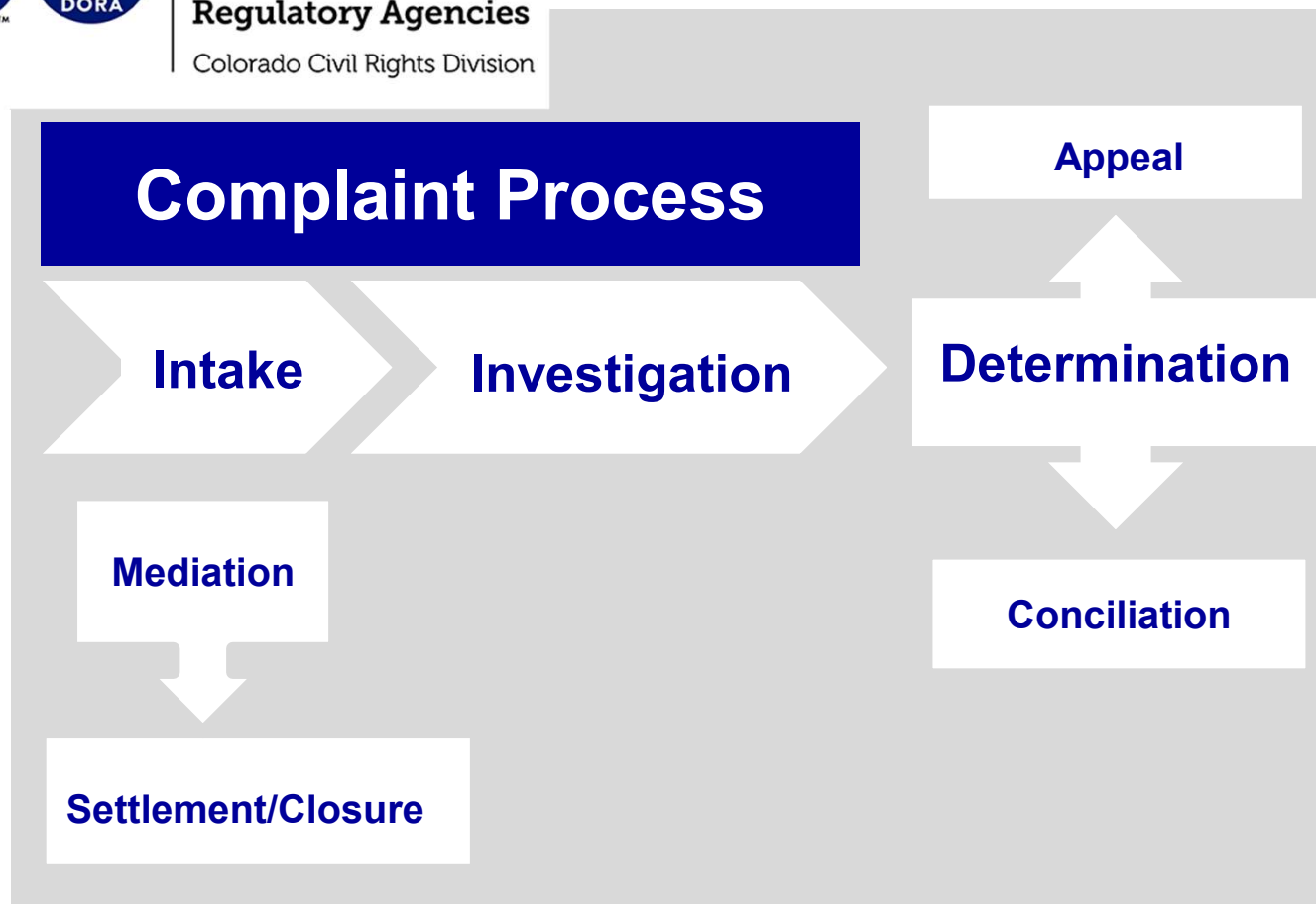
Mediation

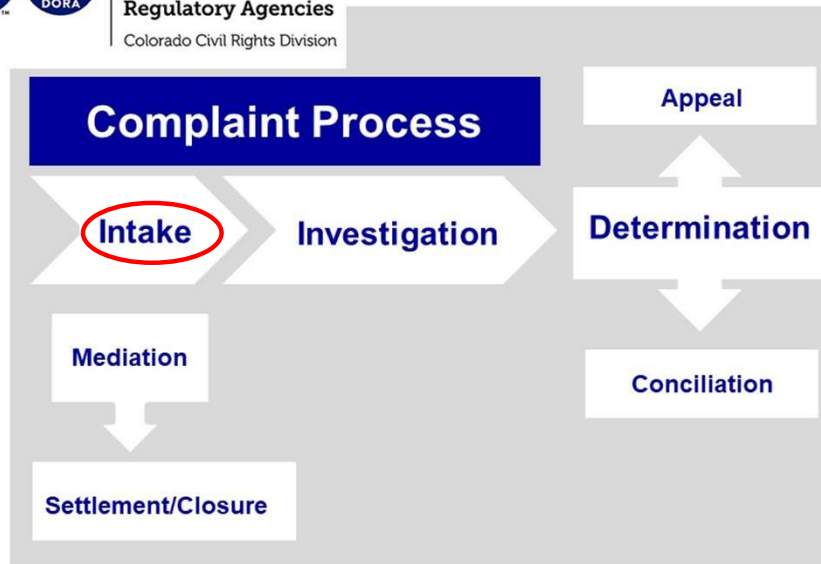
Settlement/Closure

Appeal

Determination

Conciliation





Intake

- Timely? - one year from alleged act of discrimination.
- Jurisdiction subject to CADA?
(Harm based on or because of protected class(es)?)

Three Ways to Begin Process:

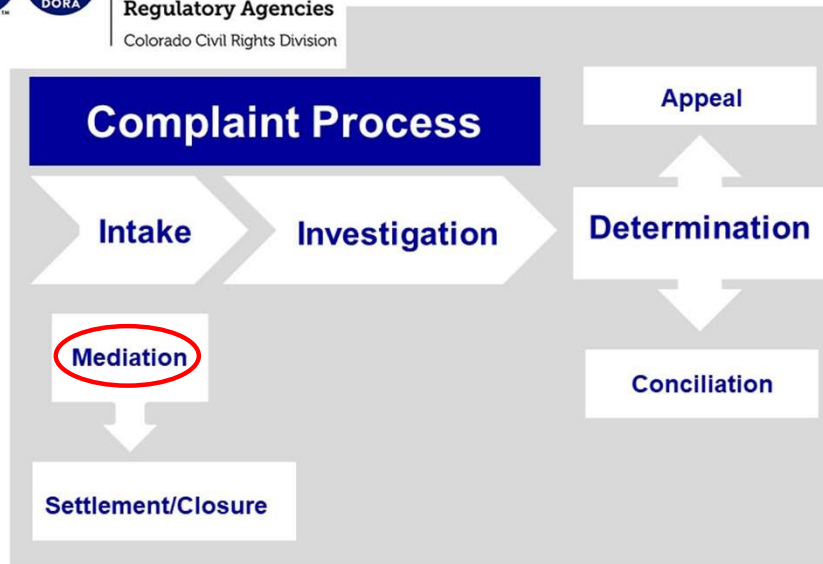
1- Online (preferred):

CaseConnect Civil Rights

[Start a New Intake Inquiry](#)

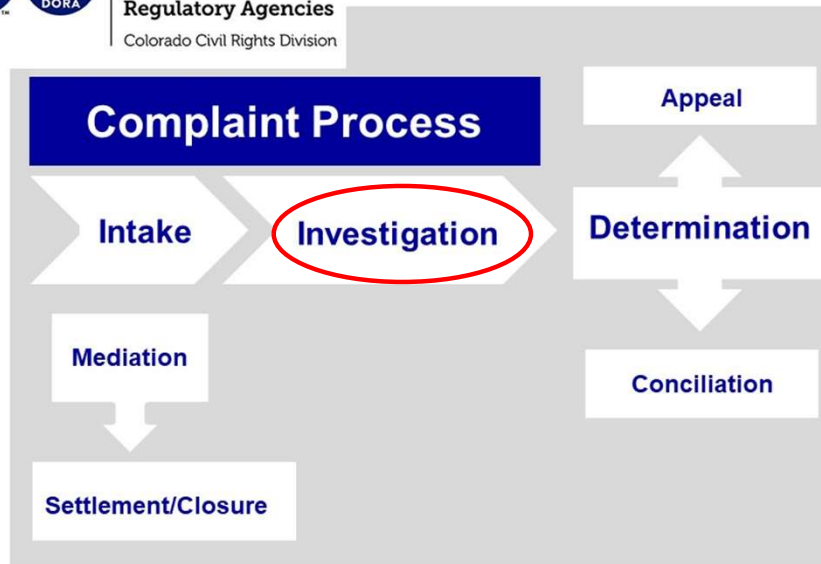
2- Telephone: 303-894-2997

3- In-Person Kiosk:
1560 Broadway, Suite 825
Denver, CO 80202



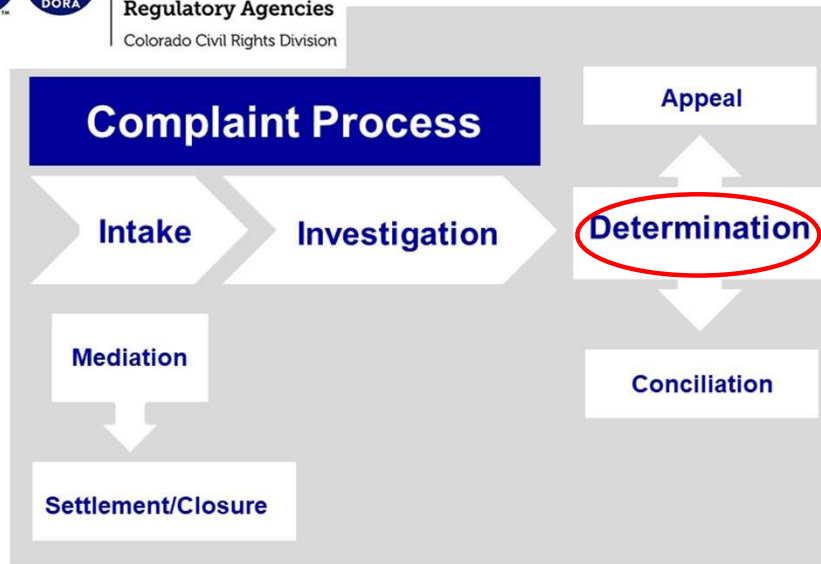
Mediation

- Voluntary
- Typically four hours
- Goal to resolve the case w/o investigation and subsequent determination
- Results in No Fault Settlement Agreement (NFSA) if successful



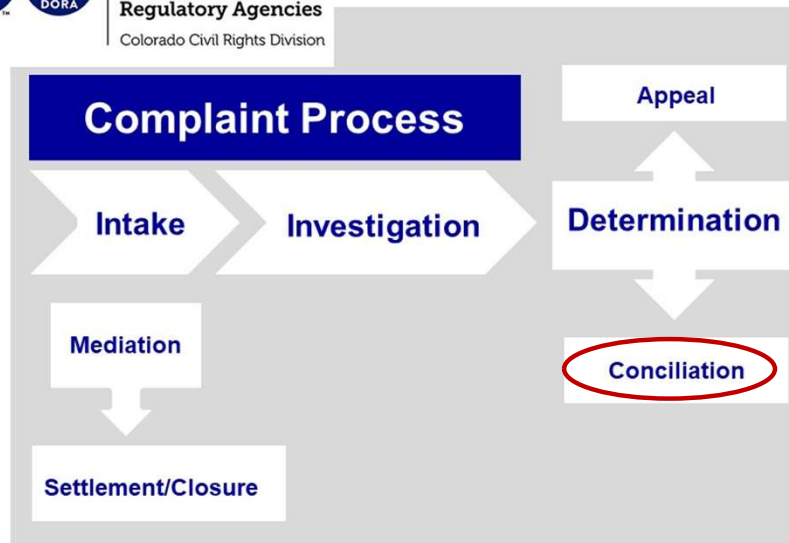
Investigation

- Investigative Specialist gathers initial complaint statement, submits an **RFI** from the responding party (Position Statement), other key documents.
- Rebuttal statement from Complainant (optional)
- *In housing cases Position Statement and Rebuttal is requested within ten (10) days from request date.*



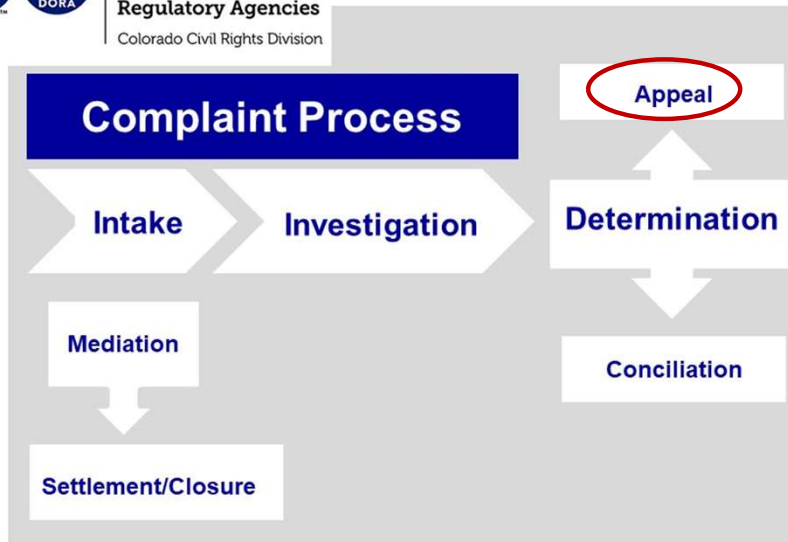
Determination

- Goal is to issue w/in 100 days from filing.
- PC = probable cause to believe a violation of CADA has occurred.
- NPC = no probable cause to believe a violation of CADA has occurred.
- Mixed Finding= (PC/NPC if basis includes more than one protected class.



Probable Cause

- Compulsory conciliation.
- Goal of conciliation is to resolve matter. Similar to mediation with the *caveat that there is a PC determination*.
- If unable to reach resolution, CCRC will set matter for hearing (i.e., file an administrative lawsuit with OAC).



No Probable Cause

- Complainant may appeal to CCRC. CCRC may then:
 - Uphold determination
 - Request additional investigation
 - Reverse determination
- If no appeal and/or appeal unsuccessful, determination acts as a dismissal.



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Discriminatory Advertising

“no children.”

“mature persons”

“best for singles or couples”

“single occupant”

“college students only.”

“English Speakers Only

“Christians Only”

“Professionals only”

“Occupied by executives, business owners”

“Located in a quiet, professional neighborhood.”



Rule of Thumb: Describe the property, not who you want to live there.



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Steering

DOJ Case Example

Adverse Housing Action: Steering (Familial Status, Lakewood, CO)

Charge (2015): Westland Apartments owners and manager implemented a policy of generally not allowing families with children to live in the front building at Westland, and generally restricting them to apartments in the rear building instead.

“Apartment owners cannot limit where children live in their apartment complexes. If an apartment is within their budget and meets their needs, the family, not the landlord, should be able to decide whether it is appropriate for them.”





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Protected Class: Disability

- A physical or mental impairment that substantially limits a major life activity
- A record of such an impairment; or; Being regarded as having such an impairment.
- Definition of “disability” and “substantially limited” is construed broadly;
- Impairment can be a disability even if episodic or in remission;
- Mitigating measures should not be considered in determination if an impairment is substantially limiting.





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Protected Class: Disability (Mental/Physical)

**Diagnoses *generally* considered
to be substantially limiting major life activities**

- Deafness, blindness, mobility impairments requiring use of a wheelchair, partially or completely missing limbs;
- Autism, intellectual disability, multiple sclerosis, cerebral palsy, muscular dystrophy; cancer, diabetes, epilepsy, HIV infection, lupus
- Mental impairments such as major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, schizophrenia.



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Protected Class: Disability (Exclusions)

Exclusions

- Persons who are currently engaging in the current illegal use of controlled substances (as opposed to those in recovery).
- Individuals with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.
- Juvenile offenders
- Sex offenders, by virtue of that status, are not disabled.



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Protected Class: Disability (Medical Inquiries)

Requesting Documentation:

- Housing Providers may request, and tenants should provide: “information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability.”
- If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the accommodation.



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Reasonable Accommodation

Reasonable Accommodations: Policy or process

Reasonable Modifications: A physical alteration to the property

- The addition of a ramp
- Grab bars
- Widening of a doorway

Individuals with disabilities must be allowed, **at their own expense**, to make any reasonable modifications necessary to allow for full enjoyment of the property.



Some modifications may be the responsibility of the owner of the housing units, particularly if the owner receives federal funds.



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Reasonable Accommodation (Modifications)

Not limited to a tenant's unit/apartment. Reasonable Modifications may also be required in common use areas - e.g. fitness center, laundry, pool area.

If a modification to a design or construction feature should already be present because the housing was built AFTER March 13, 1991, the housing provider is likely required to cover the costs.

The housing provider is also required to cover any extra costs *if they wish the tenant use more costly materials.*

Housing providers can require that the tenant obtain permits and that the work is performed in a “workmanlike manner.”



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Reasonable Accommodation (Modifications)

- Unit accessibility considerations
- Assigning lower mailbox to individual in wheelchair

IT'S NOT EASY
TO TURN OFF
THE LIGHTS

IF YOU
CAN'T
REACH THE
SWITCH



Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.



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Reasonable Accommodation and the Interactive Process

- Good Faith Participation
- Working Together: Housing provider need not necessarily provide the specific accommodation requested by the tenant, **if another equally effective accommodation is available.**
- Accommodations are seldom a single-step process. Housing provider may be required to make **multiple efforts** to identify and implement a reasonable accommodation or reevaluate the effectiveness of a current accommodation.



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COVID-19 Resources



COLORADO
Department of Public
Health & Environment



COLORADO
State Emergency
Operations Center

[Covid19.colorado.gov](https://covid19.colorado.gov)

*(Most up-to-date Colorado Public Health and Governor's
Executive Orders from 2020 to present)*



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**[CDOLA.colorado.gov/housing-
covid19](https://cdola.colorado.gov/housing-covid19)**

(CARES Act, Eviction Prevention)



U.S. Department of
Housing and Urban Development

[HUD.gov/coronavirus](https://hud.gov/coronavirus)

*(Homeless programs, public
housing agencies, multifamily
property owners)*



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Assistance Animals *In Housing*

An “Assistance Animal” is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.

An assistance animal is **NOT a pet.** Assistance animals include both Service Animals and Emotional Support Animals (“ESA”).

Service Animals: Dog or Miniature Horse that is individually trained to do work or perform tasks for a person with a disability- e.g. guide dog.

ESA: any type animal, need not be individually trained to perform tasks - mere presence may provide therapeutic effect.

They told me to
“Try someplace else.”

So I did.
I called HUD.





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Certifications?

Private company
“Assistance Animal”
certifications are
not recognized under
FHA and CADA



Screenshot of the \$50 package from the US Service Dog Registry



DO NOT:

-Ask for a
license/certification

-Ask for animal to
“demonstrate” task

This “deluxe package” from an official-looking site called US Service Animals sells for nearly \$200. Service dogs need to be trained for specific disabilities, and faking one is a criminal offense in many states.



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Service Animals *In Housing*

Questions to ask:

- Is the animal a dog?
- Is the dog required because of a disability?
- What work or task has the animal been trained to perform? (Do not request that the dog perform the task or as to the nature or severity of the disability). E.g. - guiding an individual who is blind, pulling a wheelchair.



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Service vs Emotional Support

Emotional support animals, comfort animals, and therapy dogs are not service animals.

COMPARISON



Service

Emotional Support

ADA covered: Rights to bring animal into public establishments



May fly inside the airplane with their disabled owner



May live with their disabled owners, even if "No Pets" policy in place





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Emotional Support Animals

Questions to ask:

1. Has the person **requested a reasonable accommodation**? If 'Yes', proceed, if 'No', then no further analysis.
2. Is it obvious or otherwise known to the housing provider that the requesting party is disabled? If 'Yes', skip to question 4, if 'No', proceed to 3.
3. Has the person provided information that reasonably supports that the person has a disability?
4. Has the person provided information which reasonably supports that the animal does work, performs tasks, provides assistances, and/or emotional support?
5. Is the animal commonly kept in households?



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ESA- Basis for Removal

REASONS EMOTIONAL SUPPORT ANIMALS MAY BE DENIED



- The tenant is **unable** to submit an emotional support animal letter



- The animal is **illegal** in that state



- The animal is **destructive** to the property



- The tenant submits a **fake** emotional support animal letter



- The animal is **too large** for the residence



- The animal displays **threatening** behavior

- Individualized assessment of specific animal is key and must rely on objective evidence regarding animal's conduct, and not on fear of harm or damage animal may cause
- May require tenant to cover costs of repairs (reasonable wear and tear expected)



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Remedies Available (Settlement)

- Cease and Desist from discriminatory practices
- Compensatory Damages
- “Pain and suffering”
- Punitive Damages
- Attorney Fees
- Affirmative requirements to overcome a discriminatory practice
 - Policy and procedure modifications
 - Education and training of management and staff

Housing Poster

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**Colorado Law Prohibits
Discrimination in:
HOUSING**
C.R.S. § 24-34-501 et seq.

IT SHALL BE A DISCRIMINATORY OR UNFAIR HOUSING PRACTICE:
For any person to REFUSE TO SHOW, SELL, TRANSFER, RENT, or LEASE, or REFUSE TO RECEIVE and TRANSACT any bona fide offer to buy, sell, rent, or lease, or OTHERWISE MAKE UNAVAILABLE or DENY or WITHHOLD FROM any person housing; or to discriminate in the TERMS, CONDITIONS, or PRIVILEGES pertaining to any housing.

BECAUSE OF:
DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION (including TRANSGENDER STATUS), RELIGION, MARITAL STATUS, FAMILIAL STATUS, NATIONAL ORIGIN or ANCESTRY, SOURCE OF INCOME*, or VETERAN OR MILITARY STATUS**

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Emotional support animals may be any type of animal that provides a therapeutic effect to alleviate a mental impairment.

RETALIATION PROHIBITED:
It is a discriminatory act to retaliate against a person who opposes a discriminatory practice or who participates in a discrimination investigation, proceeding or hearing.

CROWN Act of 2020:
Discrimination on the basis of one's race includes hair texture, hair type, or a protective hairstyle commonly or historically associated with race, such as braids, locs, twists, tight coils or curls, cornrows, Bantu knots, afros, and headwraps. eff. 9/13/20.

 **CCRD IS A FAIR HOUSING ASSISTANCE PROGRAM (FHAP) AND PARTNERS WITH HUD IN THE ENFORCEMENT OF FAIR HOUSING LAWS.**

TO FILE A COMPLAINT OF DISCRIMINATION, OR FOR MORE INFORMATION CONTACT THE COLORADO CIVIL RIGHTS DIVISION; 1560 BROADWAY, LOBBY WELCOME CENTER, SUITE # 110, DENVER, CO 80202

MAIN PHONE: 303-894-2987 (para español, oprima dos) TOLL-FREE: 800-262-4845; V/TDD RELAY: 711;
Fax: 303-894-7830; Email: CCRD@COLORADO.CO.GOV

HOUSING DISCRIMINATION COMPLAINTS MUST BE FILED WITHIN ONE (1) YEAR AFTER THE ALLEGED DISCRIMINATORY ACT OCCURRED.

*eff. 1/1/21
**eff. 8/10/22

Division Director, Adulty Clerk, Esq. ccrd.colorado.gov 10/2023

<https://ccrd.colorado.gov/anti-discrimination-notice>



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Disclaimer

The following questions are used for illustrative purposes only and do not represent any actual questions received by either the Division of Real Estate or the Colorado Civil Rights Division. They are examples used for educational purposes only.



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Question 1

If a clubhouse, on-site fitness center, or swimming pool is restricted to “HOA Members only”, is it considered a place of public accommodation according to CADA?



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Question 2

Since fair housing laws apply to HOAs, are HOAs required to post the housing notice somewhere visible?



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Question 3

In the course of approving or denying a rental application, what are some best practices for landlords to follow to ensure they are not inadvertently (through no fault of their own) refusing to rent based on a protected class?



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Pro Tips



- Board Members: If your community allows rentals, consider including Prohibited Housing Practices - C.R.S. § 24-34-601 in your rental policy (if not already).
- **Board Members:** Consider sharing with your community the housing poster (located on slide 48 of this presentation) in your community's newsletter, on the website, or in other communications from time to time.
- **Board Members:** If a unit owner reaches out to you about a reasonable accommodation, consult with a qualified Colorado attorney.
- **Unit Owners and Board Members:** Learn more about how to avoid housing discrimination with these resources:
 - *United States Department of Housing and Urban Development ("HUD"):* <https://www.hud.gov/>
 - *Colorado Office of the Attorney General-Fair Housing Section:* <https://coa.gov/>
 - *Housing Counselor:* There are various organizations that assist members of the public to better understand their rights. For any organization, check to see if the organization serves your part of the state.
 - *Private practice attorney specializing in housing discrimination.*
 - *Department of Justice Civil Rights Division website for more information on the Americans With Disabilities Act:* www.ada.gov.



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Check Out HOA Resources At:

Web:

<https://dre.colorado.gov/hoa-center>

Send Inquiries Via E-mail To:

dora_dre_hoainquiries@state.co.us



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Colorado Civil Rights Division

Check Out CCRD Resources At:

Web:

<https://ccrd.colorado.gov/>

Send Inquiries Via E-mail To:

General Inquiries: DORA_CCRD@State.co.us

Intake Unit: DORA_CCRDIntake@State.co.us

ADR Unit (Mediation and Conciliation): DORA_CCRDADR@State.co.us

Investigations Unit: DORA_CCRDInvestigations@State.co.us



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Questions?