

HOA Forum

Attorney Perspectives on Board Member
Rights and Responsibilities in Colorado, with
guest speakers from Colorado law firm
Moeller Graf

Thank you for joining. We will begin the presentation shortly.



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The Colorado HOA Information & Resource Center

Hosted By:

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Amanda Lopez, HOA Program Assistant

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Manager



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What Is the HOA Information & Resource Center?

What the HOA Information & Resource Center does:

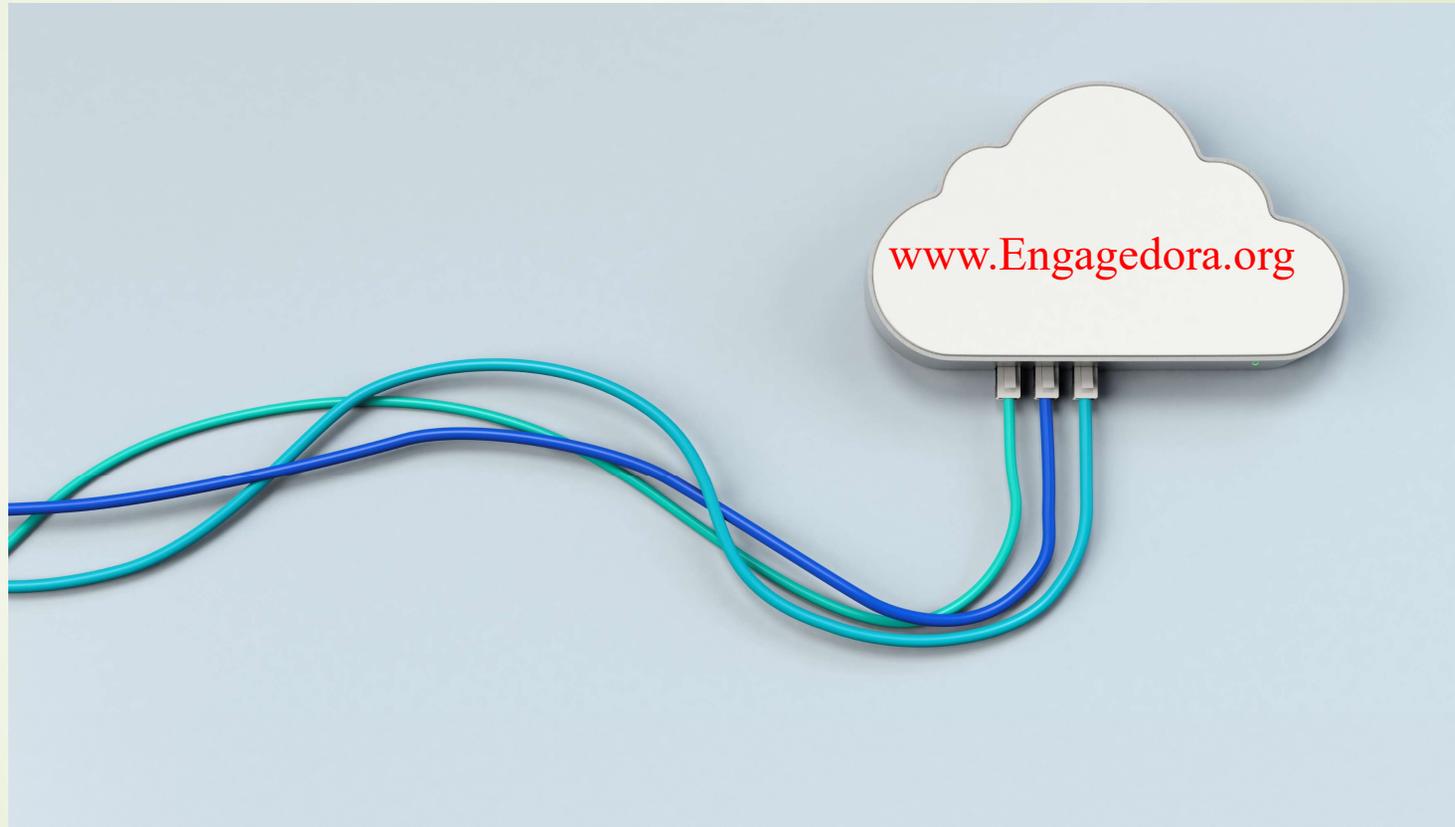
- Provides information to homeowners regarding their basic rights and responsibilities under the Colorado Common Interest Ownership Act (“CCIOA”).
- Gathers, analyzes, and reports information through complaints and HOA registrations.
 - Creates resource materials.
 - Provides education and forums.
- 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.



HB23-1105: HOA Homeowners' Rights Task Force



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DISCLAIMER

The information provided during this presentation is for educational purposes only and is not meant to provide, not should it be construed as, legal advice.



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<https://www.youtube.com/c/doradivisionrealestate/videos>



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The Colorado HOA Information & Resource Center



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Guest Speakers



**TIM
MOELLER**

Practicing since
1999



**DAVID
GRAF**

Practicing since
1995



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MOELLER

GRAF COMMUNITY
ASSOCIATION LAW

— *Where Communities Thrive* —



Board Member Perspectives

Presented by: David Graf, Tim Moeller

September 29, 2023

State of Colorado

Department of Regulatory Agencies

(“DORA”)

Board Member Perspectives

Note:

DORA is hosting this class. DORA is not responsible for the content of this class.





Board Member Perspectives

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No attorney-client is formed by this class or the materials provided.



Board Member Perspectives

- Further disclaimer:
 - We represent communities

Historical Perspective

- 12th Century Germany
 - Separate ownership of floors in buildings



Historical Perspective

- France, 1804
 - Statutory creation of ownership of separate floors



Historical Perspective

- United States, 1961
 - Mortgage insurance available for condominiums





Governmental Parallel

- US Constitution Article IV, Section 4:
 - Guarantee a republican form of government



Governmental Parallel

- Federalist Papers, No. 38
 - All powers come from the people
 - Leaders are elected by the people
 - Leaders follow laws and documents



Relative Roles

- Owners:
 - Elect leaders (vote for some every year)
 - Vote to amend the declaration
 - Vote to terminate the community
 - Take all other actions reserved in the documents or law



Relative Roles

- Board of Directors:
 - Administer the corporation
 - Broad authority to decide
 - Subject to powers reserved to the owners
 - Unpaid volunteers

Relative Roles

- Committees:
 - Depends on documents
 - Often advisory to the Board





Relative Roles

- Management company/manager:
 - Not required by law
 - No longer licensed in Colorado
 - Powers delegated by board
 - Typically not the decision-maker



Legal Authority

- Colorado Common Interest Ownership Act
 - CCIOA
 - July 1, 1992

Legal Authority

- ❑ Colorado Revised Nonprofit Corporation Act



Duty

- Directors Have a Fiduciary Duty
 - Higher standard to the Association

Top 3 Duties of a Fiduciary



The Duty to Act
in Good Faith



The Duty
of Care



The Duty
of Loyalty



Duty

- Fiduciary Duty

- Duty of Loyalty

- Duty to act in the corporation's interests first



Duty

- Fiduciary Duty
 - Duty of Loyalty; plus

 - Duty of Ordinary Care
 - Act reasonable
 - Make informed decisions
 - Perfection not required

Board Service

- One annual meeting of owners
- Multiple board meetings (usually)





Board Service

- Annual budget
- Infrastructure responsibility
- Vendor oversight
- Covenant compliance



Board Challenges in 2023

- ❑ Insurance premiums skyrocketing
- ❑ Covenant enforcement after 1137
- ❑ Deferred maintenance/reserve funding
- ❑ Conflict in board and in community



Board (suggested) Goals

- Create atmosphere where reasonable people serve
- Honor owners' participation



Possible Solution

- How?
 - Minimize email voting
 - Servant leadership for the board
 - Steward leadership for the community



Possible Solution

- How?
 - Aggressively push out information
 - Give owners necessary context
 - Recognize everyone is busy



Board (suggested) Goals

- Longer-term financial planning
- Reserve study/reserve funding goals



Possible Solution

- How?
 - Frequent reserve study updates
 - Frequent discussions about reserve contributions

Board (suggested) Goals

- Keeping board members motivated to serve





Possible Solution

- How?
 - Clear expectations set at meetings
 - Use of committees
 - Protection from difficult owners



Possible Solution

- Handing difficult meetings
 - Steward leadership vision
 - Civility pledge
 - Etiquette policy
 - Meeting Martial Arts[©]



Board Rights and Responsibilities

- Rights:
 - Fair treatment from owners
 - Enjoy their private lives in the community



Board Rights and Responsibilities

- Responsibilities:
 - Generally understand governing authority
 - Treat owners fairly
 - Hold owners to uniform standards
 - Recognize that unique situations may exist



Board Rights and Responsibilities

- Responsibilities:
 - Allow owner access to records according to law
 - Consider alternative dispute resolution processes

Questions

Budgets

Can you explain the process for vetoing a proposed budget at a typical annual meeting where the budget is presented? Is there a certain number of members required to be in attendance/a quorum required to be established in order to effectively veto the budget?



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Selective Enforcement

If a previous HOA board allowed a specific improvement in a condo unit that did not comply *with the current HOA's interpretation of CCIOA*, how do they address similar improvements that current owners want to engage in since there is precedent? I would think that since there is precedent, the current board would have to allow similar improvements; if not, their decisions can be viewed as arbitrary and capricious.



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Collections

Our board is a dedicated group of working professionals who care about our community and really want to work with our neighbors to improve our property values. There is one homeowner who has lived here for 15 years who has unfortunately fallen on hard times and can not make her regular assessment payments. We understand we have the right (and probably the obligation) to place a lien on her property to collect, but we really don't want to unless it's absolutely necessary. Do you have any advice on how we may "gently remind" her to pay her dues without escalating the situation into nasty legal threats and large attorney fees?



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Meetings by Zoom

At HOA board meetings held by Zoom, are all owners entitled to comment on any motion that the board considers? My concern is that, assuming a 3 minute time limit per member - with 20 members and 4 motions needing to be voted on - the meeting would go on for over 4 hours. Are there any best practices to effectively manage this issue?



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Apathy in Community

We live in a rural community of 50 units where about 80% of owners use their property as a second home/vacation home. It is becoming increasingly difficult to fill positions on the volunteer board of directors and architectural review committee. It seems like many folks just want to be able to enjoy the amenities and outdoors without putting in any work to ensure things are run properly and paid for. How is the HOA's responsibilities affected if it is unable to fill volunteer board positions yet still has a duty to maintain the common areas?



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Meeting Notice

What is a reasonable notice timeframe for board meetings and agendas? Should the agendas be mailed out in advance?



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Covenant Enforcement

A homeowner gets a fence approved by the Architectural review board for a specific type of fence with a maximum height. They then build something different. What recourse do we as the board have to make them change it so that everyone doesn't get to build the same fence asserting selective enforcement?



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Covenant Enforcement

Most homeowners are very courteous when they receive a notice of violation. However, some threaten us with lawsuits or claim harassment or discrimination. What is the best way to respond to these threats?



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HB23-1137

Our HOA does not allow campers. With the new Colorado Law, a homeowner has 30 days to cure a camper violation. Homeowners can essentially move their camper on day 30, cure the violation and then bring it back. They can continue this and keep their camper all year. How do we handle this situation with the new Colorado Law passed in 2022?



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Board Member Duties

Can you speak a little about a board member's fiduciary duty to the association? I'm aware there's a duty of care and duty of loyalty, but sometimes the line is blurred. For example, a realtor recently knocked on a few doors in the HOA and one of them happened to be that of the HOA President. The realtor asked the president if there were any special assessments looming that his client should be aware of. We do, in fact, have a large assessment coming up to help pay for our insurance policy renewal. Does the HOA President have a duty to disclose this information to the realtor? If he tells the realtor about the assessment, wouldn't that discourage people from buying and reduce our potential buying pool?



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Conflicts on the Board

What should one Board Member do when the majority of the Board refuses to follow the governing Association Bylaws?



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Ballots

Any tips on how ballots should be structured/created so as to ensure maximum transparency and voter confidence/understanding?



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Insurance

We are seeing the cost of HOA master insurance policies doubling and in some cases tripling. Our previous insurance company dropped us and we were barely able to secure basic property coverage after reaching out to 9 different insurance agencies. Fortunately, our HOA is financially sound and we have good reserve account policies in place for these types of things. What advice do you have for HOA's and boards who are not able to find insurance coverage or have the reserves to pay for these new insurance policies?



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Smoking Policy

Can we amend our by-laws to have "no smoking" in common areas as well as individual units? Meaning we would have a smoke-free building? (Obviously provide designated areas for smoking outside)



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Use/Lease Restrictions

A few questions about use/lease restrictions:

A) Could we update our Bylaws to forbid the purchase of a rental/investment property and require all owners to occupy their units full-time?

B) We are considering implementing a “lottery” system where even and odd numbered units would be allowed to rent out their units every other year. For example, beginning 2024, even-numbered units may rent, 2025, odd-numbered units may rent, etc. Would this be a prudent policy? If not, do you have any alternative suggestions to a fair short-term rental policy?



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Billing

Is it proper to combine a special assessment charge with the unit owners' regularly-scheduled periodic assessments on their statements?



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Contact Information

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Thank You!



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