

# **The Colorado HOA Information & Resource Center HOA Forum – Association Records and Disclosures Friday, January 26<sup>th</sup>, 2024**

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Thank you for joining. We will begin momentarily.

# Disclaimer

- The information in this presentation is intended for educational purposes only and should not be construed as legal advice. Any legal questions should be directed toward a qualified, licensed attorney in Colorado.

## What the HOA 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 Center Does Not Do

- Does not mediate or arbitrate on behalf of homeowners, board members, or community association managers.
- Does not act as a regulatory program.
- Does not provide legal advice.
- Does not investigate or intervene in disputes that arise between homeowners or associations.
- Does not act as an advocate.
- Does not assess fines or penalties.
- Does not enforce an HOA’s failure to register.



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# Items Associations MUST Maintain and Produce to Owners, per 38-33.3-317

1) Records required to be produced by the association's Declaration/Bylaws	2) Annual disclosures required by 38 33.3 209.4	3) Receipts and expenditures affecting association operations	4) Claims for construction defects	5) Minutes of ALL unit owner/board meetings (and actions taken w/o a meeting)	6) Written communications and votes cast by board members outside of any official meeting
7) Name and address of unit owners	8) Current governing documents	9) Three (3) years of financial statements and seven (7) years of tax returns	10) Certain contact information of board members and officers	11) A list of all fees connected to the purchase or sale of a unit (i.e. transfer fees and status letters)	12) Most recent Secretary of State annual report
13) A written statement, requested by a unit owner, setting forth the amount of unpaid assessments currently levied against said unit owner's unit	14) The most recent reserve study, <u>if any</u>	15) Current written contracts and any contracts for work performed in the preceding two (2) years	16) Any board or committee action to approve or deny a unit owners' request for an architectural design modification to said unit owners' unit	17) Ballots, proxies, and other voting records related to voting by unit owners for one (1) year after the election, vote, or action to which they relate	18) Any resolutions adopted by the board that affect unit owners' rights
19) All written communications within the past three (3) years to all unit owners generally as unit owners					

1) Records required to be produced by the association's Declaration/Bylaws

- Associations may have their own list of records “to be maintained and produced” on unit-owner request that may not necessarily be covered in CCIOA Section 38-33.3-317.
- Typically fine as long as the retention and production of such records is not in violation of the provisions set forth in CCIOA Section 38-33.3-317.



2) Annual disclosures  
required by 38-33.3-209.4

- These disclosures are:

- ❖ The name of the association.
- ❖ The name of the association's designated agent or management company, if any.
- ❖ A valid physical address and telephone number for both the association and the designated agent or management company, if any.
- ❖ The name of the common interest community.
- ❖ The reception number or book and page for the main document that constitutes the declaration.
- ❖ The date on which the association's fiscal year commences.
- ❖ The associations operating budget for the current fiscal year.

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2) Annual disclosures  
required by 38-33.3-209.4

(continued)

- ❖ A list, by unit type, of the association's current assessments, including both regular and special assessments.
- ❖ The association's annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure.
- ❖ The results of the association's most recent available financial audit or review.
- ❖ A list of all association insurance policies, including, but not limited to, property, general liability, association director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed.
- ❖ All the association's bylaws, articles, and rules and regulations.
- ❖ The minutes of the executive board and member meetings for the fiscal year immediately preceding the current annual disclosure.
- ❖ The association's responsible governance policies adopted under section 38-33.3-209.5.



### 3) Receipts and expenditures affecting association operations

- Payments to:
  - ❖ Vendors
  - ❖ Managing agents
  - ❖ Attorneys
  - ❖ Employees of the association





#### 4) Claims for construction defects

- More precisely, CCI0A states: “**Records of claims for construction defects and amounts received pursuant to settlement of those claims**” (38-33.3-317(b)).
- A construction defect action - which could result in a claim for a construction defect – means any civil action or arbitration proceeding for damages brought against a construction professional to assert a claim for damages of real or personal property or personal injury caused by a defect in the design or construction of an improvement to real property.
- For more information on construction defect actions, please see 38-33.3-303.5, C.R.S..



5) Minutes of ALL unit owner/board meetings (and actions taken w/o a meeting)

- Minutes should be the official record of what actually occurred at the meeting (i.e., approved by the board).
- If the unit-owners or board properly hold a meeting pursuant to 7-127-107, C.R.S. and 7-127-109, C.R.S. (members' action without a meeting) or 7-128-202, C.R.S. (board action without a meeting), then a record of all actions taken at said meetings must be produced.
- A record of all actions taken by any committee of the executive board must also be produced pursuant to this section.



6) Written communications and votes cast by board members outside of any official meeting

- More precisely, CCIOA states: **“Written communications among, and votes cast by, board members that are: (1) directly related to an action taken by the board without a meeting pursuant to the Colorado Revised Nonprofit Corporation Act; or (2) directly related to an action taken by the board without a meeting pursuant to the association’s bylaws” (38-33.3-317(1)(d)).**
- Any action taken by the board without a meeting, either pursuant to the association’s Bylaws OR state law (Nonprofit Corporation Act), must be documented, maintained, and produced. Includes ALL communications in writing that directly relate to the action (Emails, text messages, social media IM’s).

7) Name and address of unit owners

- More precisely, CCIOA states: **“The names of unit owners in a form that permits preparation of a list of the names of all unit owners and the physical mailing addresses at which the association communicates with them, showing the number of votes each unit owner is entitled to vote; except that this paragraph (e) does not apply to a unit, or the owner thereof, if the unit is a time-share unit, as defined in section 38-33-110 (7)”** (38-33.3-317(1)(e)).
- Name, physical mailing address, and number of votes ONLY (note, does not include email address or telephone numbers).



## 8) Current governing documents

- Most recently amended Declaration, Bylaws, Articles of Incorporation (or other organizational documents), Rules and Regs, governance policies per 38-33.3-209.5, and any other policies adopted by the Board.



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9) Three (3) years of financial statements and seven (7) years of tax returns

- Financial statements as described in section 7-136-106, C.R.S..
  - ❖ The association's most recent annual financial statements (if any) and its most recently published financial statements (if any) showing in reasonable detail its assets and liabilities and results of its operations.
- Tax returns of the association for the past seven years.
- To the extent available!

Gross wages	44,650
Income taxes and deductions	8,930
Disposable income	35,720
Rent expense	10,800
Food	3,900
Car expenses	3,600
Clothing	1,800
Cell phone	1,200
Internet and cable TV	1,200
Entertainment, travel, etc.	2,700
Total living expenses	25,200
Car loan interest	240
Student loan interest	4,240
Total interest expenses	4,480
Net income	6,040

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10) Certain contact  
information of board  
members and officers

- More precisely, CCIOA states: **“A list of the names, electronic mail addresses, and physical mailing addresses of its current executive board members and officers”** (38-33.3-317(1)(h)).
- Officers – generally include the President, Vice-President, Secretary, Treasurer, Member-at-Large. Officers are appointed by the Board of Directors.
- Does not include telephone numbers!
- Some HOA’s opt to include one generic email address as its “electronic mail address of its current executive board members”, while others designate its community association manager (CAM) as its primary point of contact. Check the management contract.

11) A list of all fees connected to the purchase or sale of a unit (i.e. transfer fees and status letters)

- More precisely, CCI0A states: **“A list of the current amounts of all unique and extraordinary fees, assessments, and expenses that are chargeable by the association in connection with the purchase or sale of a unit and are not paid for through assessments, including transfer fees, record change fees, and the charge for a status letter or statement of assessments due”** (38-33.3-317(1)(h.5)).



12) Most recent Secretary  
of State annual report

- Most recent Secretary of State annual report, *if any*.
- Public document otherwise available on the Colorado Secretary of State's website.

13) A written statement, requested by a unit owner, setting forth the amount of unpaid assessments currently levied against said unit owner's unit

- More precisely, CCI0A states: “**Financial records sufficiently detailed to enable the association to comply with section 38-33.3-316(8) concerning statements of unpaid assessments**” (38-33.3-317(1)(j)).
- According to 38-33.3-316(8), the association has 14 calendar days to furnish the statement to the unit owner.
- If association fails to furnish the statement within 14 calendar days, the association has no right to assert a lien upon the unit for unpaid assessments which were due on the date of the request.

14) The most recent reserve study, if any

- The association's most recent reserve study, if any.
- Note there is no current state law (as of 1/25/24) that associations must conduct a reserve study. **However**, associations must have two policies related to reserve studies; one on the investment of reserve funds, and one for when the association has a reserve study prepared. For more information, please see 38-33.3-209.5 – Required governance policies.

15) Current written contracts and any contracts for work performed in the preceding two (2) years

- “Current written contracts” includes:
  - ❖ The management company contract currently in effect
  - ❖ The associations contract with legal counsel
  - ❖ Any contracts with vendors and service professionals, such as for snow plowing, landscaping, maintenance, accounting, trash, utilities, etc.
- Contracts for any work performed in the preceding two years must also be maintained and produced.



16) Any board or committee action to approve or deny a unit owners' request for an architectural design modification to said unit owners' unit

- Includes any vote taken by the board or committee to approve or deny a request for an architectural modification on a unit.

17) Ballots, proxies, and other voting records related to voting by unit owners for one (1) year after the election, vote, or action to which they relate

- Election votes, ballots, proxies.



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18) Any resolutions adopted by the board that affect unit owners' rights

- Could include resolutions pertaining to short-term rentals, safety in the neighborhood, cyclist and pedestrians, etc.

19) All written communications within the past three (3) years to all unit owners generally as unit owners

- Includes any written communication that was circulated to all unit owners. For example:
  - ❖ Newsletters
  - ❖ Email notifications
  - ❖ Flyers



# Records to be Produced at the Discretion of the Executive Board (“may be withheld”) - 38-33.3-317(3)

(a) Architectural drawings, plans, and designs, unless released upon the written consent of the legal owner of the drawings, plans, or designs;

(b) Contracts, leases, bids, or records related to transactions to purchase or provide goods or services that are currently in or under negotiation;

(c) Communications with legal counsel that are otherwise protected by the attorney-client privilege or the attorney work product doctrine;

(d) Disclosure of information in violation of law;

(e) Records of an executive session of an executive board;

(f) Individual units other than those of the requesting owner; or

(g) The names and physical mailing addresses of unit owners if the unit is a time-share unit, as defined in section 38-33-110 (7).

# Records that “Must” be Withheld from Production



PERSONNEL, SALARY, OR MEDICAL RECORDS RELATING TO SPECIFIC INDIVIDUALS; OR



PERSONAL IDENTIFICATION AND ACCOUNT INFORMATION OF MEMBERS, INCLUDING BANK ACCOUNT INFORMATION, TELEPHONE NUMBERS, ELECTRONIC MAIL ADDRESSES, DRIVER'S LICENSE NUMBERS, AND SOCIAL SECURITY NUMBERS.

## Record Retention Requirements

Sections 38-33.3-317 & 38-33.3-209.4 of the Colorado Common Interest Ownership Act (“CCIOA”) and the Colorado Nonprofit Corporation Act, sections 7-136-101 to 7-136-107, C.R.S.

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Board and owner meeting minutes, permanently;

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Records of all actions taken by the owners or board without a meeting (i.e., actions by mail or electronic mail), permanently;

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Financial statements as described in section 7-136-106, C.R.S., for the past three years and tax returns of the association for the past seven years, to the extent available;

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Current written contracts to which the association is a party and contracts for work performed for the association within the immediately preceding two years;

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Ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate;

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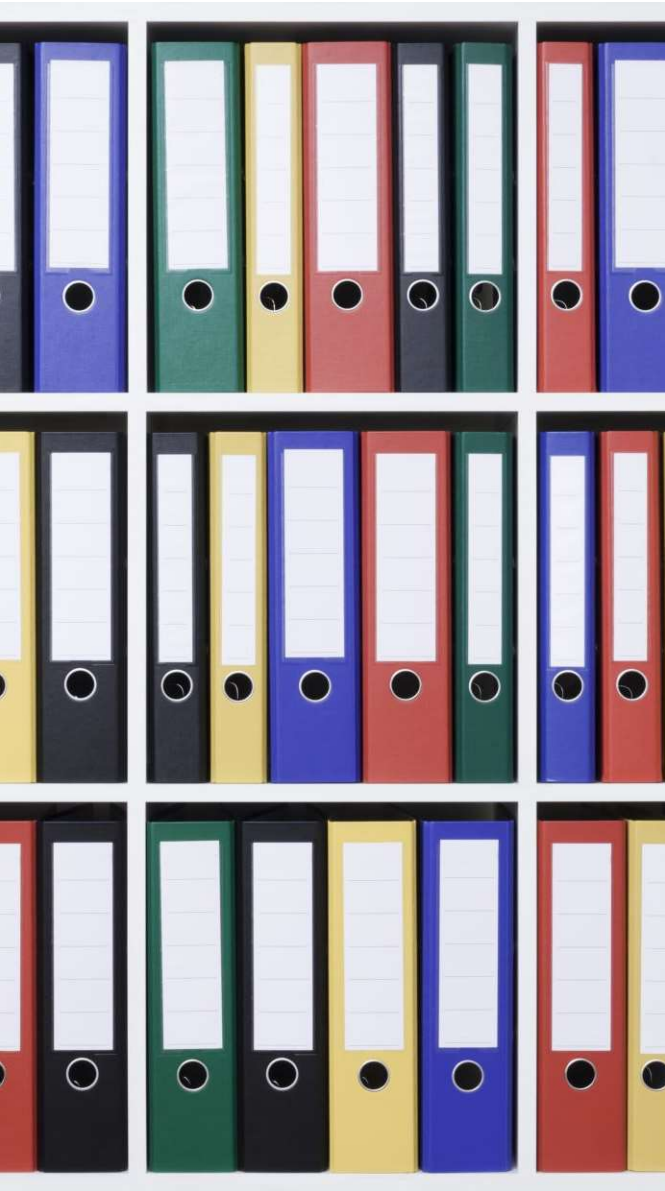
All written communications within the past three years to all unit owners generally as unit owners.



# Important Notes

- Associations are permitted to require requests be made in writing and be submitted at least 10 days prior to the inspection or copying of records.
- Owner is allowed to designate an authorized agent to examine/copy those records which must be produced by the association.
- Associations may limit the inspection and copying of records to normal business hours or the next regularly scheduled meeting of the board, if that meeting occurs within 30 days after the request.

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## Important Notes (continued)

- Associations are allowed to impose a reasonable charge which may be collected in advance. The charge may not exceed the estimated cost of production and reproduction of the records.
- Owners may request and receive records by email.

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# What About the Use of Membership Lists?

The list or any part thereof, may not be obtained or used by any person for any purpose unrelated to a unit owner's interest as a unit owner, without the consent of the board of directors.

The list may not be used to solicit money or property, unless such money or property is used solely to solicit the votes of the unit owners in an election to be held by the association.

The list may not be used for any commercial purpose.

The list may not be sold to or purchased by any person.



**COLORADO**  
Department of  
Regulatory Agencies

# Helpful Request Form for Unit Owners

- Click here:

[https://drive.google.com/file/d/1RP0oRjfR2mdfH0Q8uNhn\\_C1szzP2QNW9/view](https://drive.google.com/file/d/1RP0oRjfR2mdfH0Q8uNhn_C1szzP2QNW9/view)

Name of Association

C/O Name of Management Company (if professionally managed)

Street Address of Association or Management Company

City, CO Zip

To Whom it May Concern,

My name is (**Owner of Record**), I own the unit located at (**address of unit in association**) ("Subject Property"). Pursuant to C.R.S. 38-33.3-317 of the Colorado Common Interest Ownership Act, I am requesting certain records which (**Name of Association**) ("Association") is responsible for maintaining for the purposes of document retention and production to owners.

In accordance with the Association policy on association records - retention and owner inspection, I am requesting current and accurate copies of the following records:

- 1) The Association's organizational documents;
- 2) The Association's Declaration as amended;
- 3) The Association's covenants;
- 4) The Association's Bylaws;
- 5) All policies, procedures, rules and regulations of the Association currently in



# Tips for Boards/CAM's

- Send out mandatory disclosures with board/member meeting notices to save on mailing costs or post the required disclosures on the association's website.
- Maintain an updated literature binder at the association's principal place of business (bring the binder to all meetings to make available for owner-inspection).
- Prepare a records request template form in advance to publish on the association website to assist owners in their request. Anticipate requests to come in. Consider speaking with legal counsel to ensure the form complies with statutory requirements. Note – an owner's request can not be denied because they failed to use the approved form.



# Contact Us

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