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Voting and Proxies

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

HOA Information & Resource Center

Presented By:

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Voting & Proxies

The purpose of this presentation is to provide an overview of voting, secret ballots, proxies, and other information for your communities.



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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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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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Who Is This Presentation For?

- Home Owners-
- Board Members-
- Community Association Managers-

Quorums

- Oxford dictionary defines quorum as “the minimum number of members of an assembly that must be present at any of its meetings to make the proceedings of that meeting valid.”



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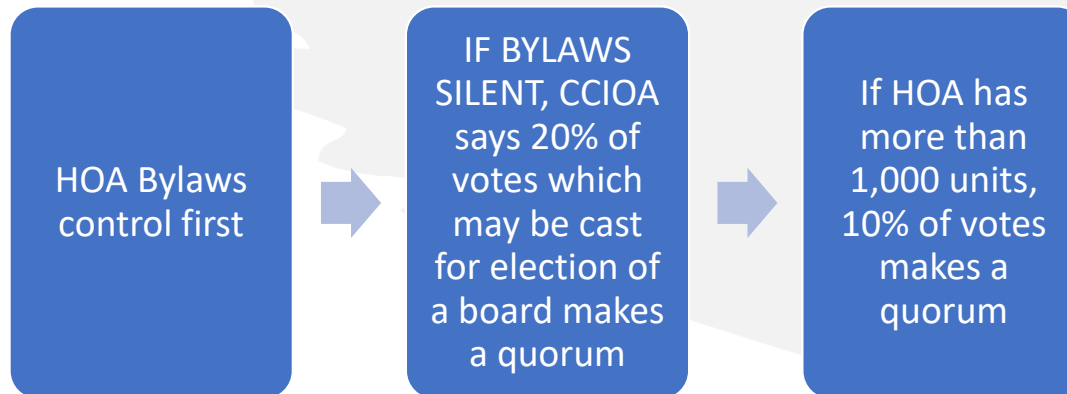
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Quorums

38-33.3-309, C.R.S.

➤ How is a quorum met at the annual members meeting?



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Quorums

38-33.3-309, C.R.S.

➤ How is a quorum met at any meeting of the executive board?

HOA Bylaws control first



IF BYLAWS SILENT, CCIOA says 50% of the votes on the board must be present at the beginning of the meeting (or grant their proxy) to make a quorum



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Quorums

38-33.3-309, C.R.S.

➤ How is a quorum met in Pre-CCIOA communities?

For Any Type Of Meeting:
Twenty-five percent of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter. See § 7-127-206(1), C.R.S.



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Quorums and CCIOA

- 38-33.3-303, C.R.S.
 - Quorum is NOT needed in order for a majority of unit owners to effectively veto a proposed budget.
 - As long as a quorum is met, 67% of all persons present and entitled to vote at any meeting of the unit owners may remove any member of the executive board with or without cause.



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Quorum

- Voting members should be physically present at the beginning of the meeting.



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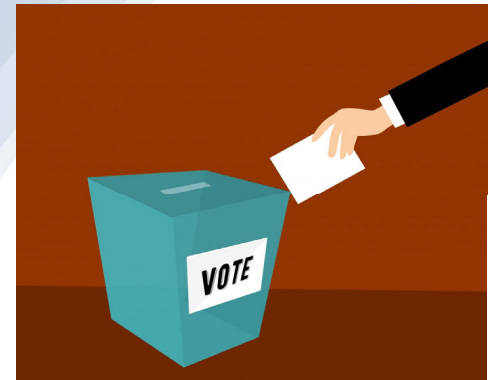
Voting – Allocation of interests (38-33.3-207, C.R.S.)



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Not all Votes may be Equal

- *Square footage*
- *Lot size*
- *Votes per parcel*
- *Number of bedrooms*



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Reminder

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- 7-127-109, C.R.S. (Colorado Nonprofit Act)
 - Unless stated otherwise in the Bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every member entitled to vote on the matter.



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Ballots

For written ballots, to comply with §7-127-109, C.R.S. of the Colorado Nonprofit Corporation Act, a written ballots must:

1. State each proposed action; and
 2. Provide an opportunity to vote for or against each proposed action (In most cases, this is a “Yes” or “No”).
- ❖ For complete transparency, if you’re a board member or CAM sending out the ballots, include on the ballot both the number of responses needed in order for a quorum to be met as well as the number of approvals required to approve the matter **had the vote occurred at the corresponding in-person meeting. Both requirements must be met with the corresponding number of physically-received ballots in order for the vote to be valid.**

A solicitation letter to owners must include:

1. The number of responses needed to meet the quorum requirements;
2. The percentage of approvals necessary to approve each matter other than election of directors;
3. The time by which a ballot must be received by the association in order to be counted;
4. Be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter.

Secret Ballots

- 38-33.3-310, C.R.S. requires secret ballots be utilized at membership meetings under certain circumstances.

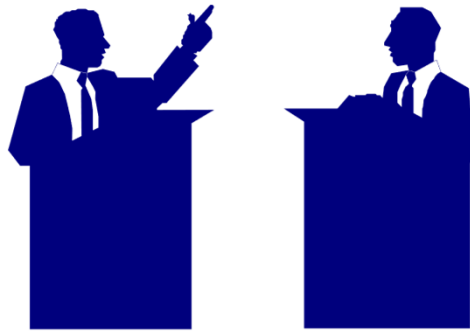


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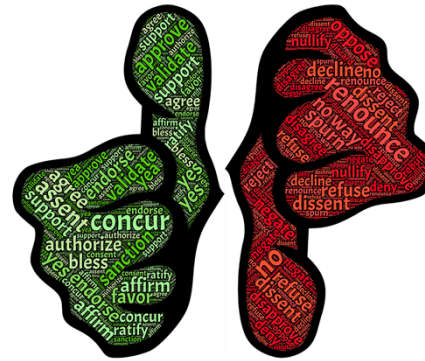
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When are Secret Ballots Required?



Must – Contested board positions



May – Discretion of the board

20% of
owners

Must – requested by owners



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Proxies

- A proxy can be defined as:
 - a writing
 - that an owner provides to another person
 - that authorizes the other person to act on behalf of the owner in accordance with its terms.
- Colorado Revised Nonprofit Corporation Act
- *Note: SB22-059 recently amended § 38-33.3-310, C.R.S. to clarify that proxies terminate eleven months after its date unless the proxy itself indicates an earlier termination date.*



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Why Use Proxies?

- Help Achieve Quorum
- Combat Member Apathy In Your Community
- Affect Change Through The Democratic Process



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Validity of Proxies

A Proxy shall not be valid if obtained through fraud or misrepresentation - 38-33.3-310, C.R.S.



- ❖ To eliminate doubt, ensure the proxy contains the name, address, and signature of the owner who is granting it.
- ❖ How is this possible with online meetings?
 - Online meetings should be permitted in accordance with the Bylaws and as long as the meeting chair can validate the name, address, and signature of the owner voting, **AND** votes can be submitted anonymously per the secret ballot requirement. Consult with legal counsel.



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Questions:

- Owner: Do I have to use the HOA/CAM's approved proxy form?
- When is the proxy considered “received” by the association? See § 7-127-203, C.R.S.
- Owner: Can I turn in my proxy to the board before the meeting/vote occurs?



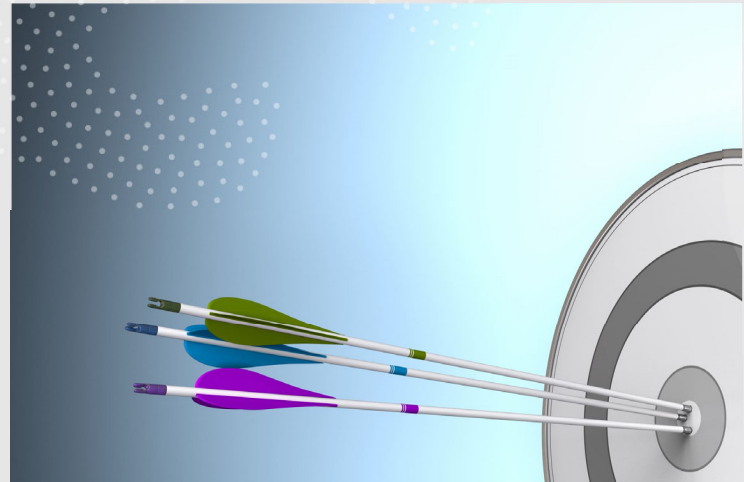
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Transparency is Key!

- When the vote is held, the association should announce the results promptly. *This means as soon as practicable.*
- Communicate the results:
 - Announcement at Meeting
 - Email
 - Mail
 - Newsletter
 - Website/Web Portal



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Can the Board Conduct Action by Email?

- Check Bylaws first to see if permitted.
- If Bylaws are silent, 7-128-202, C.R.S. controls (action without a meeting):
- Each board member must:
 - Be notified in writing an action is considered being taken by electronic vote
 - Offered an opportunity to vote either for or against such an action being occurred
- A board member may demand an action **NOT** be taken by email (i.e., action must be taken in a physical meeting instead). Demand must be in writing by the time stated in the notice. See 7-128-202, C.R.S.



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Pro Tips

1. **Board members:** Retain copies of ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate. See § 38-33.3-317(1)(n), C.R.S.
2. **Board members:** Conduct all votes and actions by secret ballot to appease those owners who may be concerned about harassment or retaliation.
3. **Unit Members:** Assign your proxy to a trusted neighbor.
4. **Board Members:** Do not forget to schedule your meetings (board meetings AND unit owner meetings), especially those that will require a unit owner vote, at times that allow for unit member participation. This increases likelihood of reaching quorum and increases communications in the community.
5. **Board Members:** Ensure transparency in the community by announcing the results of any ballot measure or election. Remember that homeowners are busy and may not be privy to the inner workings of the HOA, although they would like to be. Try not to take a lack of meeting participation personally but rather as an opportunity to network and get more involved.
6. **Board Members:** Create a prize for attending important community meetings (perhaps a drawing for a gift card to a local restaurant).
7. **Unit Members:** Show signs of appreciation to your volunteer board members by thanking them for a job well done. A simple email can do wonders!



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Check Out HOA Resources For Yourself At:

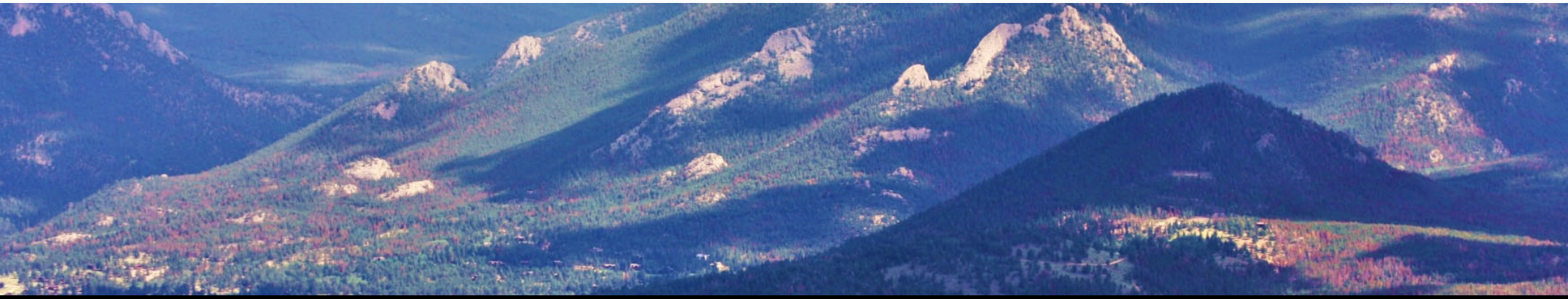
- Web: <https://dre.colorado.gov/hoa-center>
- Send Inquiries Via E-mail To: dora_dre_hoainquiries@state.co.us



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Questions?