

“A Tale of Two Managers” A Look at Self-Managed vs. Professionally Managed Community Associations in Colorado

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BY THE HOA INFORMATION AND
RESOURCE CENTER



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Colorado HOA Information & Resource Center

What It 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 It Doesn't 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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Legal Disclaimer

The information in this presentation is offered for educational purposes only and should not be construed as legal advice. Please consult with qualified legal counsel for legal advice.



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Talking Points

- Definitions
- Statistics
- Community Association Manager (“CAM”) duties
- CAM licensing/regulation
- Colorado state law and CAMs
- Designated Agent (“DA”) Considerations
- Interview Guide for Board Members



What is a “Self-Managed” Community?

- A community in which the operational and administrative duties are handled by the elected, volunteer board members.



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What is a “Professionally-Managed” Community?

- A community in which the operational and administrative duties are handled by an outside individual or company, paid for by the board of directors out of the association’s operating fund (owner assessments).



What is a “Hybrid-Management” model?

- A community in which the operational and administrative duties are handled by both the elected volunteer board members and an outside individual or company.



Some Statistics (Data current as of 2024-08-29)

- 8,228 Active HOAs registered with the Division of Real Estate
 - 6,580 “Professionally-Managed”
 - 1,648 “Self-Managed”



■ Professionally Managed ■ Self-Managed



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Some Statistics

(Data current as of the end of the Colorado CAM program in 2019)

- 2,623 prior CAM licenses
 - 2,053 “Individuals”
 - 570 “Entities”



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Types of Duties a CAM might perform

- Billing
- Collections
- Prepare the association budget
- Draft or amend policies for board approval
- Organize and attend board/annual meetings
- Obtain bids for projects and insurance policies
- Assist with board elections
- Covenant enforcement
- Communicate with owners
- Site visits
- Coordinate vendors
- Manage association bank accounts
- Write checks on behalf of the association
- Prepare and send out status letters
- Update association's registration with the state
- Respond to owner requests for association records



CAM Licensing (or lack thereof)



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Community Association Managers (“CAMs”)

Community Association Managers (“CAMs”) are **not** licensed in Colorado.

- From January 1, 2015-June 30, 2019, CAMs were subject to a licensing program.
 - Credentialing
 - Qualifying and continuing-education requirements
 - Licensing examination
 - Approved education providers
 - Background check
 - Insurance requirements



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Community Association Managers ("CAMs")

Community Association Managers ("CAMs") are not licensed in Colorado.

- HB19-1212 would have renewed the CAM licensing bill but was vetoed by the Governor.
- HB22-1239 and HB24-1078 were introduced in the General Assembly to regulate community managers in Colorado but both bills were lost.



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Colorado State Law and CAMs



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Identity of Management Company

38-33.3-209.4

- Disclose, at no cost, to the unit owners the name, valid physical address, and telephone number of the association's management company within 90 days of a management company change.
- Disclosure must be accomplished by one of the following:
 - ❖ Post on the HOA website with corresponding notice of the HOA website address via first-class mail or email
 - ❖ Maintain a literature table or binder at the HOAs principal place of business
 - ❖ Mail or personal delivery



Ability to Hire and Fire

38-33.3-302

- The association is granted the authority to hire and terminate managing agents and other employees, agents, and independent contractors that do business with the association.
- The association's contract with a managing agent shall be terminable for cause without penalty to the association. Any such contract shall be subject to renegotiation.



Executive Board Members and Officers

38-33.3-303

- Despite what may be written in the declaration or bylaws of the association, all members of the executive board shall have available to them all information related to the responsibilities and operations of the association obtained by any other member of the executive board.
 - ❖ Reports of detailed monthly expenditures
 - ❖ Contracts to which the association is a party
 - ❖ Copies of communications, reports, and opinions to and from any member of the executive board or any managing agent, attorney, or accountant employed or engaged by the executive board to whom the executive board delegates responsibilities under CCIOA



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Executive Board Members and Officers (cont.)

38-33.3-303

- A CAM that is authorized by the association to invest the association's reserve funds is subject to the same standards set forth in section 7-128-401 of the C.R.S. (the Colorado Nonprofit Act).
- This includes discharging duties:
 - ❖ In good faith
 - ❖ With the care an ordinarily prudent person in a like position would exercise under similar circumstances
 - ❖ In a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation



CAM Powers Granted by Association

38-33.3-306

- The Bylaws of the association must state which if any of its powers the executive board or officers may delegate to a managing agent.



CAM Powers Granted by Association (cont.)

38-33.3-306

- If an HOA with 30 or more units delegates powers to a CAM regarding the collection, deposit, or transfer of owner assessments, the HOA Bylaws must require:
 1. That the CAM obtain fidelity insurance in the amount of at least \$50,000 (or a higher amount determined by the board)
 2. That the CAM maintain all funds and accounts of the association separate from the funds and accounts of other HOAs managed by the CAM and maintain all reserve accounts separate from operational accounts.
 3. That an annual accounting of HOA funds and a financial statement be prepared and presented to the association by the CAM. A CAM may use a CPA or public accountant, but this is not required.



CAM Access through an Owners Unit

38-33.3-307

- For the maintenance, repair, and replacement of the common elements, a CAM has a right of access through a unit owner's unit (to the extent reasonably necessary).
 - ❖ CCIOA does not specify notification or timeline requirements.
- If, in the course of repairing said common element, the CAM (or the CAMs vendor) inflicts damage on the owner's unit, the CAM/association is liable for the cost of prompt repair.



Discussion of the CAM Contract

38-33.3-308

- The executive board does not need to openly discuss the association's contract with a CAM in an open board meeting or annual member meeting.
- Rather, they may (and usually) enter into an executive session to discuss matters pertaining to the CAM contract.
- If owners are dissatisfied with the CAM conduct/performance, they may write to the board, and the board may consider owner input in said executive session.



CAM Powers regarding Voting/Proxies

38-33.3-310

- As long as so authorized by the association to tabulate votes, a CAM, acting in good faith, may reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation.
- A CAM may doubt the validity of the signature or may doubt the validity of the signatory's authority to sign for the unit owner.



The CAM Contract is Disclosable

38-33.3-317(l)

- The CAM contract with the association must be maintained by the association and produced to the owners upon a properly submitted request by an owner.



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Registration with DORA

38-33.3-401

- Within 90 days of any change, the association must notify the Division of Real Estate of any change in management company or managing agent.



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Can an HOA compensate its board members?

- The Colorado Nonprofit Corporation Act allows an association to compensate its board of directors. However, the association's governing documents must allow for compensation.
- A community could consider whether to amend its declaration to provide for board member compensation.
 - ❖ Could help in recruiting qualified individuals to the board
 - ❖ Could save costs by not needing to hire a CAM
 - ❖ Could help ensure a community is more professionally ran
- If an association chooses to compensate board members, it must consider:
 - ❖ Insurance
 - ❖ Business Judgment Rule surrounding litigation
 - ❖ Indemnification of board members (7-129-107)



Owners Perspective: CAM considerations

- Is it difficult to identify who the Designated Agent (“DA”) is in the community for registration purposes?
- How easy is it to locate information on our HOA? (obtain governing documents like the Declaration and Bylaws).
- How do owners and board members communicate with one another? How about the owners and the community manager?
- Should the owners know who the DA is?



Interview Guide for Board Members



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How many Colorado Homeowner's Associations have you managed in the past?



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What is your knowledge of the Colorado Common Interest Ownership Act (“CCIOA”)?



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What issues have you encountered managing previous communities? Were they resolved? If so, how?



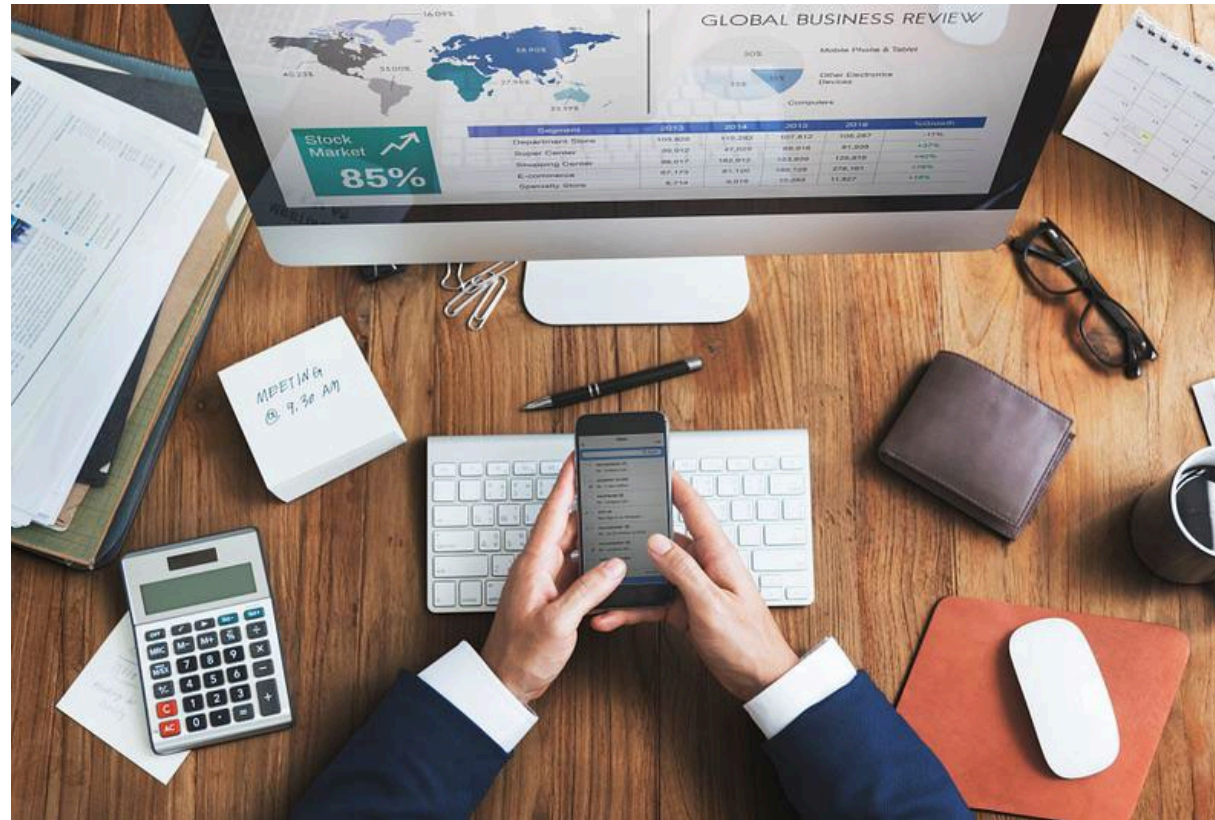
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As a community manager/company, which items have you found to be your greatest expenses and why?



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What accounting software do you use to aid in collections, and what challenges have you encountered in using it?



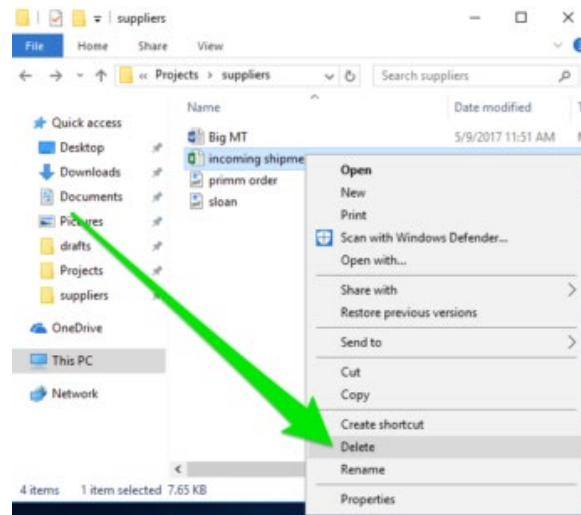
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If you intend on creating or updating an association policy, how will you ensure the new policy is compliant with state law? Do you have in-house counsel you rely on? What is their experience with HOA law?



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By what method will you submit to the association monthly records and reports? Does your company have a records disposition policy? How will association records be stored on your system and who will have authorized access?



If the CAM intends on opening an operating checking account with the association's bank, what sort of fidelity bond insurance will you secure that will be in compliance with state law? (38-33.3-313 and 38-33.3-306)



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In your opinion, what is the importance of engaging an attorney to review amendments to the Declaration?



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In terms of managing vendor contracts, how many bids will you secure for each project? How will you ensure such solicitation of bids is free from any possible conflicts of interest? (taking kickbacks, friends/family members, etc.)



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The Colorado General Assembly Website

- Quick tutorial
 - HB19-1212, Recreate CAM Licensure
 - Interview Guide for Board Members - FAQ



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Questions?



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