

“Board Member Roles and Responsibilities”

Colorado HOA Information & Resource Center
Friday, November 22, 2024

Presented By:

Nick Altmann, HOA Information Officer
Amanda Lopez, HOA Program Assistant

Thank you for joining. We will begin momentarily.



COLORADO
Department of
Regulatory Agencies
Division of Real Estate

Colorado HOA Information & Resource Center

- 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.
- 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.



Disclaimer:

This presentation is intended for educational purposes only and should not be construed as leg advice. A qualified attorney should be sought out for legal advice.



Today's Talking Points

Getting Started as a Board Member

Definitions of Leadership Positions

Roles and Responsibilities of the Board

Board Member Fiduciary Duties

Board Member Basic Job Descriptions

Duties of Directors

Read	Read applicable laws and your governing documents
Protect	Protect the assessments
Acquaint	Acquaint yourself with the common elements of the property
Learn	Learn the characteristics of your community (CCIOA vs. Pre-CCIOA)
Familiarize	Familiarize yourself with any investments and reserve accounts under management of the association
Oversee	Oversee actions of the community manager

Laws All Board Members Should Read

Colorado Common Interest
Ownership Act (“CCIOA”)

Colorado Nonprofit
Corporation Act

Fair Housing Act

Americans with Disabilities
Act

Local ordinances and zoning
codes



Documents
All Board
Members
Should
Read

Declaration

Articles of
Incorporation

Bylaws

Policies and
Procedures

Rules and
Regulations

Definitions of Leadership Positions

- Director - a member of the association's executive board (38-33.3-303(2.5)(c)).
- Officer - any person to whom the executive board delegates responsibilities under the CCIOA, including, without limitation, a managing agent, attorney, or accountant employed by the executive board (38-33.3-303(2.5)(c)).
- Member - homeowner, owner, unit owner, voting member (neighbors).
- Employee - a non-officer individual employed for the association such as an on-site supervisor, repair person, front desk or security guard
- Agent - any individual or entity authorized by the association to provide services (CAM, attorney, accountant, engineer).



Board Member Authority

- 38-33.3-302. *Powers of unit owners' association*
- 38-33.3-303. *Executive board members and officers - powers and duties*
 - (2)(b) If not appointed by the declarant, no member of the executive board and no officer shall be liable for actions taken or omissions made in the performance of such member's duties except for wanton and willful acts or omissions.
- 7-123-102. General powers



Requirements for Directors (7-128-102, C.R.S.)

Stated in the HOAs Articles of Incorporation

Must be an individual

The bylaws may prescribe other qualifications for directors

Directors do NOT need to be a resident of Colorado or a member of the HOA unless the bylaws so prescribe

Number of Directors (7-128-103, C.R.S)

- A board of directors must consist of one or more directors, with the number stated in the bylaws.
- If granted by the bylaws, the voting members, or the board, may establish a range for the size of the board of directors by fixing a minimum and maximum amount of directors.
 - The number within the established range may then be changed from time to time by the voting members or the board.



Election and Appointment of Directors (7-128-104, C.R.S.)

- All directors (except the initial directors) shall be elected and appointed in accordance with the bylaws.
- Bylaws may allow for staggered terms for directors



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

Can a Director be Removed?

- Yes.
- 38-33.3-303(8) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a vote of sixty-seven percent of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant or a member elected pursuant to a class vote under section 38-33.3-207(4).



Hypothetical Scenario

- Community has 60 voting members. Quorum requirement is 20% per the governing documents. 18 voting members show up to the recall meeting (therefore, the meeting has reached quorum and a vote to remove a board member can be taken). According to the statute, at least 12 members at the meeting need to affirmatively vote to remove the board member in this case (18×0.67). If 12 members vote in the affirmative, then the board member is recalled.

What Does a Recall Meeting Look Like?

- 1) Call a Special Meeting
- 2) Ensure notice requirements for the meeting are in accordance with the governing documents and state law for regular meetings
- 3) Include a clear agenda
- 4) Provide proxies and ballots to owners
- 5) Adhere to the association's Conduct of Meetings policy to help in reducing anticipated friction
- 6) Prepare to fill the vacancy created by the recall



How Do You Call A Special Meeting?

1. Board President may call a meeting
2. A majority of the board calls a meeting
3. 20% of all owners request a meeting (or a lower percentage specified in the bylaws)



How Do You Call A Special Meeting? (cont.)

- Note that if a petition signed by 20% of all the owners demanding a special meeting be called is properly delivered to a corporate officer of the association, and the association does not notify the community within thirty (30) days of receipt of the demand, then a person signing the demand may set the date and place of the meeting and give notice pursuant to section 7-127-104 of the Colorado Nonprofit Act (7-127-102(3), C.R.S.)).
- Meeting notices must be provided at least ten, but not more than fifty, days before the meeting.



Requirements for Officers (7-128-301, C.R.S.)

- Stated in the HOAs Articles of Incorporation
- Must be an individual who is 18 years or older, appointed by the board
- All nonprofit corporations **MUST** have a President, Secretary, and Treasurer, unless otherwise provided in the bylaws.



Can an Officer be Removed?

- Authority to remove an officer found in governing documents
- Violation of a fiduciary duty
- Remove official title while still remaining a board member



Committees

- Authority to form committees is found in the governing documents (38-33.3-303(3)(b)).
- If governing documents silent, the board of directors may create one or more committees of the board and appoint one or more directors to serve on them (7-128-206, C.R.S.).



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

Types of Committees

- Architectural Review
- Landscape
- Environmental/Water Use
- Safety
- Community Activities
- Construction Defect
- Renovation
- Special Project



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

Can a Committee Member be Removed?

- At the discretion of the board, and in accordance with the governing documents.



What are the Fiduciary Duties of Board Members?

- A fiduciary duty is a legal obligation to act in good faith on behalf of a person or organization that relies on you.



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

Duty of Care

- The legal obligation imposed on an individual requiring that they exercise a reasonable standard of care while performing any acts that could foreseeably harm others.
 - As a board member, educate yourself
 - Obtain advice from professionals when unsure



Duty of Loyalty

- Term used to refer to a fiduciary's loyalty to a corporation. A board member must place the association's interest before their own.
 - A breach might occur if a board member fails to recuse themselves of voting when they are knowingly aware of a conflict of interest
- Take steps to avoid even the perception of a conflict of interest.



Duty of Due Diligence

- The standard is the effort made by an ordinarily prudent or reasonable party to avoid harm to another party or themselves.



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

Duty of Confidentiality

- Board members are required to restrict the access to certain documentation and information.
 - Section 7-128-401 of the Colorado Revised Nonprofit Corporation Act requires each board member to discharge their duties in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances and in a manner the board member reasonably believes to be in the best interests of the association.
- Records Request, 38-33.3-317, C.R.S.
- Executive Sessions, 38-33.3-308(3) & (4)



Duty to be Free from Conflicts of Interest

- 38-33.3-209.5 (responsible governance policies) states that the required policy regarding how to handle conflicts of interest involving board members must, at a minimum, define or describe the circumstances under which a conflict of interest exists; set forth procedures to follow when a conflict of interest exists, including how, and to whom, the conflict of interest must be disclosed and whether a board member must recuse himself or herself from discussing or voting on the issue; and, provide for the periodic review of the association's conflict of interest policies, procedures, and rules and regulations.



Duty to be Free From Conflicts of Interest (cont.)

- Section 7-128-501 of the Colorado Revised Nonprofit Corporation Act defines a conflicting interest transaction to mean "A contract, transaction, or other financial relationship between a nonprofit corporation and a director of the nonprofit corporation, or between the nonprofit corporation and a party related to a director, or between the nonprofit corporation and an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest."



Business Judgment Rule

- Good faith?
- Prudently?
- Best interest of the association?
- Rely on expert advice



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

What Could Constitute a Breach of Duty?

- Putting your personal interests over those of the community
- Acting outside of your scope of authority
- Violating state law or the governing documents
- Negligently managing funds
- Sowing discord or spreading false rumors about residents



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

Board Members - Obtain Proper Insurance

38-33.3-313, C.R.S.

- Property
 - Liability
 - Fidelity
 - Other insurance specified in the governing documents
-
- Not required by statute, but recommended:
 - ❖ Director's and Officer's ("D&O")
 - ❖ Vendor Insurance
 - ❖ Specific insurance requirements will (most of the time) be found in your declaration.



Board Member Job Descriptions

Note: not statutorily defined and will vary by community



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

HOA President

Leader of the board

Schedules, attends, and leads board meetings

Signs contracts

Power to call special meetings

Spearheads the enforcement of policies and procedures enacted by the board of directors

HOA Vice-President

Supports the President in his/her duties

Acts in place of the President when the President is away/absent

May have additional duties authorized by the board to act on behalf of the association

HOA Secretary

Maintains meeting minutes

Maintains all the association records

Tracks HOA activity to ensure compliance with bylaws

Maintains contact information for the board and community members

Provides access to association records by its owners

HOA Treasurer

Custodian of the association's monies

Keeps accounting records of the disbursements and receipts of the association's books

Tracks organizations financial condition

Coordinates the budgetary process

Prepares annual financial reports

Handles any audit reviews

Thank You!

More resources for board members:

<https://dre.colorado.gov/hoa-board-member-education>

<https://dre.colorado.gov/division-programs/hoa-office/education-and-outreach/understanding-self-managed-hoas>

YouTube Channel:

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

Contact Information

HOA Information & Resource Center

Email: dora_dre_hoainquiries@state.co.us

Address: 1560 Broadway, Suite 925, Denver, CO 80202



COLORADO
Department of
Regulatory Agencies
Division of Real Estate