

The HOA Information & Resource Center

A Program of the Colorado Division of Real Estate

HOA Forum: HOA Governing Documents 101

February 28, 2025

Thank you for joining. The presentation will begin shortly.



COLORADO
Department of
Regulatory Agencies
Division of Real Estate

The HOA Information & Resource Center

Section 12-10-801, C.R.S.

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 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.

Legal Disclaimer

The information in this presentation is offered for educational purposes only and should not be construed as legal advice. Any legal questions should be directed toward an attorney licensed to practice law in Colorado.

HOA Governing Documents

- 1) Declaration/Plat Map
- 2) Articles of Incorporation
- 3) Bylaws
- 4) Policies and Procedures
- 5) Rules and Regulations

What Controls? State Law or HOA Governing Documents?

- If a particular section of the Colorado Common Interest Ownership Act (“CCIOA”) or the Colorado Nonprofit Corporation Act takes precedence over an association's governing documents, then that section will likely begin with language such as “Notwithstanding any provision in the declaration, bylaws, or other documents to the contrary...”
- If a particular section of CCIOA or the Nonprofit Act is to supplement but not take precedence over the association's governing documents, then that section will likely begin with language such as “Unless otherwise provided in the declaration, bylaws, or rules of the association...”



What Controls? State Law or HOA Governing Documents? (con't 01)

- Example of “Notwithstanding...” provision



Source: L. 91: Entire article added, p. 1707, § 1, effective July 1, 1992.

38-33.3-106.5. Prohibitions contrary to public policy - patriotic, political, or religious expression - public rights-of-way - fire prevention - renewable energy generation devices - affordable housing - drought prevention measures - child care - fire-hardened building materials - operation of businesses - definitions. (1) **Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary,** an association shall not prohibit any of the following:

(a) The display of a flag on a unit owner's property, in a window of the unit, or on a balcony adjoining the unit. The association shall not prohibit or regulate the display of flags on the basis of their subject matter, message, or content; except that the association may prohibit flags bearing commercial messages. The association may adopt reasonable, content-neutral rules to regulate the number, location, and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole.

(b) Repealed.

(c) The display of a sign by the owner or occupant of a unit on property within the boundaries of the unit or in a window of the unit. The association shall not prohibit or regulate the display of window signs or yard signs on the basis of their subject matter, message, or content; except that the association may prohibit signs bearing commercial messages. The association may establish reasonable, content-neutral sign regulations based on the number, placement, or size of the signs or on other objective factors.

Colorado Revised Statutes 2024
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Uncertified Printout



What Controls? State law or HOA Governing Documents? (con't 02)

- Example of “Unless otherwise provided...” provision



PART 3

RESIGNATION AND TERMINATION

7-126-301. Resignation. (1) **Unless otherwise provided by the bylaws,** a member may resign at any time.

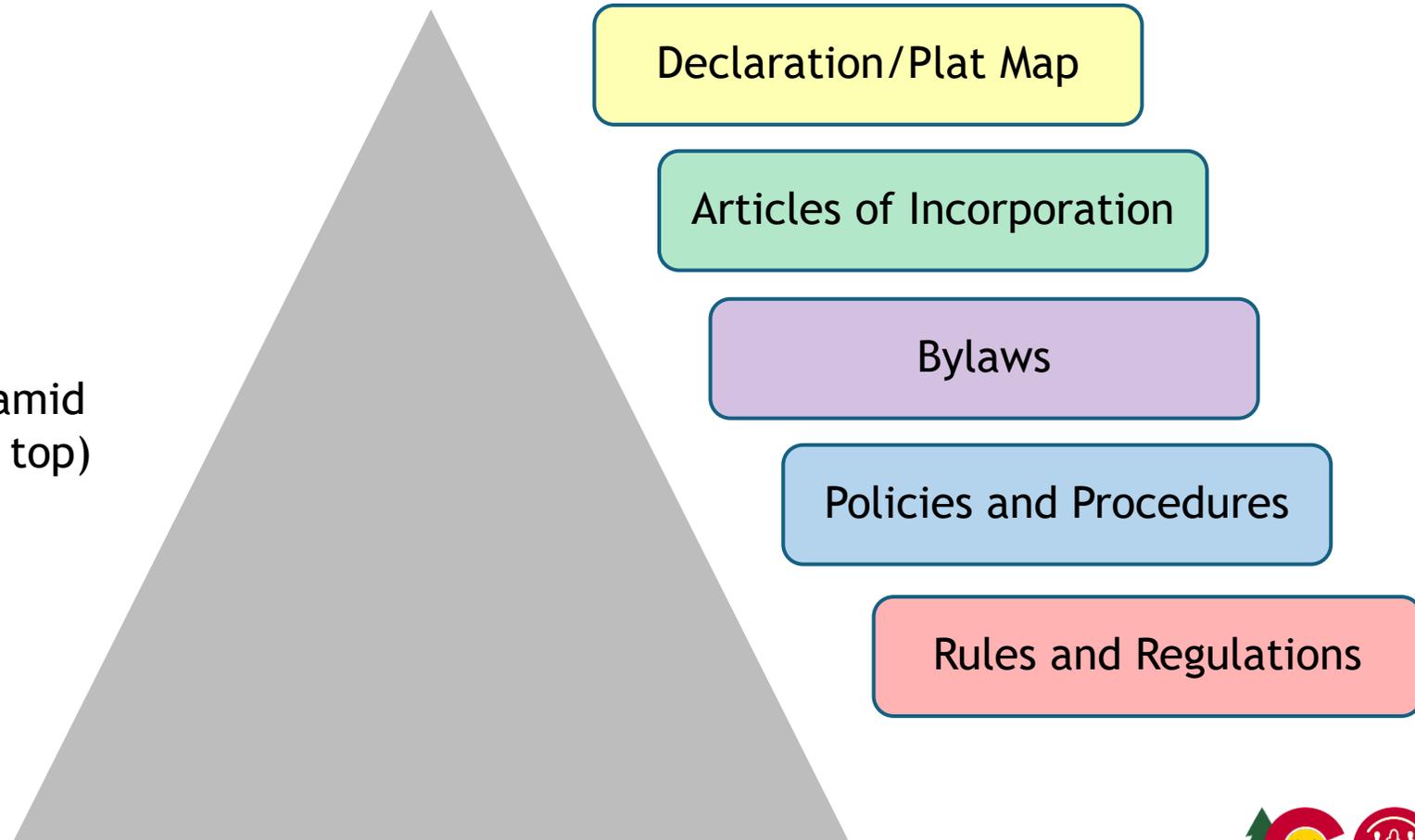
(2) The resignation of a member does not relieve the member from any obligations the member may have to the nonprofit corporation as a result of obligations incurred or commitments made prior to resignation.

Source: L. 97: Entire article added, p. 672, § 3, effective July 1, 1998.



Hierarchy of HOA Governing Documents

HOA Governance Pyramid
(highest authority on top)



Declaration/Plat Map

- Also referred to as:
 - Declaration of Covenant's, Condition's and Restrictions
 - "CC&R's"
 - "Covenants"
- Mandatory document
- Recorded with the County Clerk and Recorder's office

Features of the Declaration/Plat Map

- Identifies the community on a map
- Shows the boundaries of each unit and the unit's identifying number
- Defines the common elements and limited common elements and their locations in the community
- Sets forth maintenance obligations for the HOA and the owners
- Establishes the HOA's authority to collect assessments and adopt budgets



Features of the Declaration/Plat Map (con't)

- Delineates protective standards and any use restrictions
- Describes the transfer of control from the developer (“Declarant”) to the owners
- Details the allocation of assessments and votes
- States the procedure to amend the Declaration (“itself”)
- Specifies insurance requirements
- Provides for HOA’s lien authority
- Sets forth any additional development rights the declarant may exercise

Requirements for the Declaration/Plat Map

- ❑ State law requires that the Declaration contains:
 - ❖ The name of the common interest community
 - ❖ The name of the county in which the common interest community is situated
 - ❖ An allocation to each unit of the allocated interests (“HOA dues”)

This is only a partial list. For a complete list of all the required items the declaration must contain, see section 38-33.3-205, C.R.S.

Where is the Declaration/Plat Map Found?

- The county Clerk and Recorder's office where the HOA is located

Is the Declaration/Plat Map available for Public Inspection?

- Yes. By visiting the county Clerk and Recorder's office where the HOA is located.
- A nominal fee may be required by the Recorder's office to obtain or download a copy.
- Owners may also request a copy of the Declaration from the association.

How to Amend the Declaration/Plat Map

- For the Declaration/Plat Map: Owner approval OF AT LEAST 51%, NOT TO EXCEED 67%. (section 38-33.3-217, C.R.S.)
- For provisions in the Declaration/Plat Map that seek to restrict unit use rights: Owner approval OF AT LEAST 67%. The Declaration/Plat Map itself may require owner approval UP TO 100%. (section 38-33.3-217(4.5), C.R.S.)



Articles of Incorporation

- Also referred to as:
 - Formation documents
 - Organizational documents
 - “Articles”
 - Incorporating documents
- Mandatory document
- Colorado Secretary of State’s office

Features of the Articles of Incorporation

- Proves that the nonprofit corporation (the HOA) legally exists in the State of Colorado
- Shows the date the HOA was formed, and the type of entity being created (most often - a nonprofit corporation as opposed to an LLC or for-profit corporation)
- Includes general powers and authorities of the HOA
- May include a method for amending the Articles of Incorporation (“itself”)
- Provides for the composition of the board of directors
- Transfer Fees/Status Letter

Requirements for the Articles of Incorporation

- ❑ State law requires that the Articles of Incorporation contain:
 - ❖ The principal office address of the nonprofit corporation's initial principal office
 - ❖ The true name and mailing address of each incorporator
 - ❖ Provisions regarding the distribution of assets upon dissolution of the nonprofit entity

This is only a partial list. For a complete list of all the required items the Articles of Incorporation must contain, see section 7-122-102, C.R.S.

Optional Requirements for the Articles of Incorporation

- ❑ State law sets forth that the Articles of Incorporation may (but do not need to) contain:
 - ❖ The names and addresses of the individuals who are elected to serve as the initial directors
 - ❖ The purpose for which the nonprofit corporation is incorporated;
 - ❖ Provisions that define, limit, and regulate the powers of the nonprofit corporation, its board of directors, and its members, or any class of members

This is only a partial list. For a complete list of all the optional requirements for the Articles of Incorporation, see section 7-122-102, C.R.S.

Powers of the Articles of Incorporation

- The Articles of Incorporation set forth the power of the HOA to:
 - Sue and be sued, complain, and defend in its name
 - Make and amend bylaws
 - Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
 - Elect or appoint directors, officers, employees, and agents of the nonprofit corporation, define their duties, and fix their compensation;
 - To carry on a business;

This is only a partial list. For a complete list of all the powers of the Articles of Incorporation enumerated by the Colorado Nonprofit Corporation Act, see section 7-123-102, C.R.S.

Where is the Articles of Incorporation Found?

- The Colorado Secretary of State's office
- Owners may also request these documents from the association.

Are the Articles of Incorporation available for Public Inspection?

- Yes. By visiting the Colorado Secretary of State's website.
- The filing documents are free to view/download.

How to Amend the Articles of Incorporation

- Check the Articles of Incorporation first for amendment instructions
- If Articles of Incorporation are silent, follow procedure laid out in section 7-130-102, C.R.S.

Bylaws

- Also referred to as:
 - Bylaws
- Mandatory document
- Board of directors/community manager should have a copy

Features of the Bylaws

- Board member roles and responsibilities
- Defines notice requirements
- Board meeting protocol
- Election procedures for board of directors
- Board and annual meeting quorum requirements
- Appointment of proxies
- Instructions for how a board may take an action without a meeting
- Conditions surrounding when a Special Meeting may be called

Requirements for the Bylaws

- ❑ State law requires that the Bylaws contain:
 - ❖ The number of members of the executive board and the titles of the officers of the association
 - ❖ Election by the executive board of a president, a treasurer, a secretary, and any other officers of the association the bylaws specify
 - ❖ The qualifications, powers and duties, and terms of office of, and manner of electing and removing, executive board members and officers and the manner of filling vacancies
 - ❖ Fidelity insurance coverage for a community manager (only applies to HOAs with 30 or more units)

This is only a partial list. For a complete list of all the required items the Bylaws must contain, see section 38-33.3-306, C.R.S.



Where are the Bylaws found?

- ❑ There is no required centralized location, but the board of directors and/or the community manager should have a copy.

Are the Bylaws available for Public Inspection?

- No. Although the Bylaws is a mandatory document, it is not available for inspection by members of the general public.
 - Boards may sometime provide the document anyway on the HOAs website or to inquiring non-owners
- It is a private document to the members of an association and only needs to be provided to the owners.
- Boards may impose a reasonable fee in accordance with section 38-33.3-317, C.R.S. to provide the document to owners/members of the HOA.

How to Amend the Bylaws

- The Bylaws itself **MUST** have a procedure for amending the bylaws (section 38-33.3-306(1)(f), C.R.S.)
- Typically only requires board approval, though owner approval **MAY** be required. Check bylaws.

Policies and Procedures

- Also referred to as:
 - The nine mandatory governance policies required by CCIOA section 38-33.3-209.5
- Mandatory documents
- Board of directors/community manager should have a copy

The Nine Mandatory Governance Policies Required by CCIOA section 38-33.3-209.5

- I. Collection of unpaid assessments
- II. Handling of conflicts of interest involving board members
- III. Conduct of meetings
- IV. Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines
- V. Inspection and copying of association records by unit owners
- VI. Investment of reserve funds
- VII. Procedures for the adoption and amendment of policies, procedures, and rules
- VIII. Procedures for addressing disputes arising between the association and unit owners

The Nine Mandatory Governance Policies Required by CCIOA section 38-33.3-209.5 (con't)

IX. When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial analysis. For the purposes of this subparagraph (IX), an internally conducted reserve study shall be sufficient.

Features of Policies and Procedures

- Clarify and refine the regulations and restrictions found in the Declaration/Plat Map, Articles of Incorporation, and Bylaws
- “Reigns down” the higher order procedures into real, actionable items the community can use and put to practice
- Cannot contradict the Declaration/Plat Map or Articles of Incorporation
- Do not need to be prepared by an attorney (unless required by the governing documents).
- An experienced community association attorney or community association manager may be able to help ensure any such written policy or procedure complies with local and state laws and the higher-authority governing documents.



Does an HOA need any other Policies/Procedures other than the Nine that are Required by CCIOA?

- A community can have as many policies/procedures as it likes - as long as they do not contradict with the Declaration/Plat Map, Articles of Incorporation, Bylaws, and applicable laws.
- Examples may include policies on:
 - Pets
 - Short-term rentals
 - Accessory-dwelling units (“ADUs”)
 - Fire-mitigation efforts
 - Waterwise landscaping
 - Operation of home-based businesses
 - Nuisance
 - Any other issue(s) facing the community



How to Amend the Policies and Procedures

- Check governing documents
- Typically only requires board approval, though owner approval *MAY* be required.

Rules and Regulations

- Also referred to as:
 - Rules and Regulations
 - “Rules and regs.”
- Optional document
- Board of directors/community manager should have a copy

Features of the Rules and Regulations

- Similar to Policies and Procedures, though CCIOA does not require any specific rules and regulations the same way it does the nine required governance policies (previous slides in blue)
- Clarifies and refines the regulations and restrictions found in the Declaration/Plat Map, Articles of Incorporation, Bylaws, and Policies and Procedures

How to Amend the Rules and Regulations

- Check governing documents
- Typically only requires board approval, though owner approval **MAY** be required.
- Committees may also be used to create or change rules and regulations, which may then be adopted by the board.

To Summarize...

Name of Document	Is it Mandatory?	Where is it Located?	Is it Publicly Available?	Is Owner Approval Needed for Amendments?
Declaration/Plat Map	Yes	County Clerk and Recorder	Yes	Yes
Articles of Incorporation	Yes	Colorado Secretary of State	Yes	Maybe
Bylaws	Yes	Board/Manager	No	Maybe
Policies and Procedures	Yes	Board/Manager	No	Maybe
Rules and Regulations	No	Board/Manager	No	Maybe

The End...JUST KIDDING!

- Section 303(3)(a) of CCIOA prohibits boards from unilaterally adopting certain amendments and **REQUIRES** owner approval for such revisions to be valid. Specifically, boards cannot act on behalf of the association to take the following actions:
 1. Terminate the community
 2. Elect members of the board (except to fill vacancies)
 3. Change qualifications of directors, change powers and duties of directors, and change terms of the directors
- In addition to the above, the Colorado Nonprofit Corporation Act prohibits boards from unilaterally amending their documents to change quorum and requires all quorum changes to be presented to the members for approval.

C.R.S. Citing

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PART 4
REGISTRATION

38-33.3-401. Registration - annual fees. (1) Every unit owners' association shall register annually with the director of the division of real estate, in the form and manner specified by the director.

(2) (a) Except as otherwise provided in subsection (2)(b) of this section, the unit owners' association shall submit with its annual registration a fee in the amount set by the director in accordance with section 12-10-215 and shall include the following information, updated within ninety days after any change:

- (I) The name of the association, as shown in the Colorado secretary of state's records;
- (II) The name of the association's management company, managing agent, or designated agent, which may be the association's registered agent, as shown in the Colorado secretary of state's records, or any other agent that the executive board has designated for purposes of registration under this section;
- (III) The physical address of the HOA;
- (IV) A valid address; email address, if any; website, if any; and telephone number for the association or its management company, managing agent, or designated agent; and
- (V) The number of units in the association.

(b) A unit owners' association is exempt from the fee, but not the registration requirement, if the association:

- (I) Has annual revenues of five thousand dollars or less; or
- (II) Is not authorized to make assessments and does not have revenue.

(3) A registration is valid for one year. The right of an association that fails to register, or whose annual registration has expired, to impose or enforce a lien for assessments under section 38-33-3-316 or to pursue an action or employ an enforcement mechanism otherwise available to

38-33.3-401(2)(b)(I), C.R.S.

Check out more resources for yourself

- Federal, state, and local laws that impact HOAs:

<https://dre.colorado.gov/ccioa-and-other-state-local-and-federal-laws#law>

- County Clerk and Recorder's websites:

<https://docs.google.com/spreadsheets/d/14ENjpdEd7sLVhMPTQBbJAW7blMywBGPC/edit?gid=2088233455#gid=2088233455>

- Colorado Secretary of State website:

<https://www.sos.state.co.us/>

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Thank you for joining our HOA Forum!