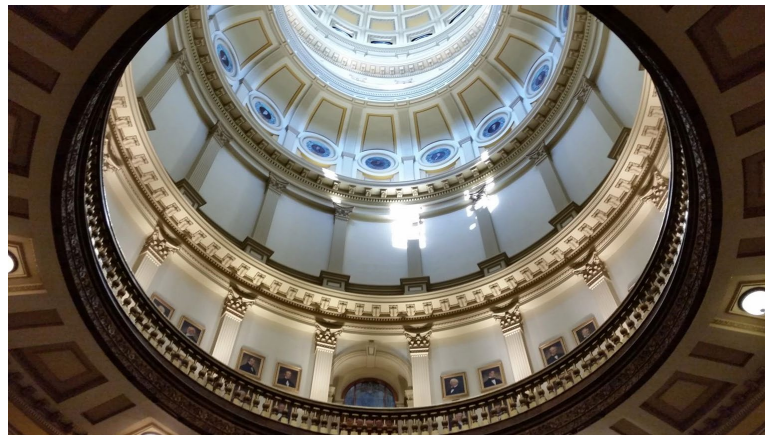


HOA Forum: Pre-CCIOA Communities

Friday, August 29, 2025

Thank you for joining. The presentation will begin momentarily.

The HOA Information and Resource Center



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Legal Disclaimer

The information in this presentation should not be construed as legal advice. It is intended for educational purposes only. If you have any legal questions, please consult with a licensed attorney.

What the HOA Center does do:

- 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 educational material and forums
- Provides and maintains a website with information for the public
- Registers HOAs in accordance with § 38-33.3-401(1) C.R.S.
- Provides an Annual Report to the Legislature

What the HOA 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

Helpful Definitions in CCIOA

- **Association or unit owners' association:** “a unit owners' association organized under section 38-33.3-301.” *See section 38-33.3-103(3), C.R.S.*
- **Common Interest Community:** “real estate described in a declaration with respect to which a person, by virtue of such person's ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration.” *See section 38-33.3-103(8), C.R.S.*
- **Condominium:** “a common interest community in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.” *See section 38-33.3-103(9), C.R.S.*

Helpful Definitions

- **Declaration:** “any recorded instruments however denominated, that create a common interest community, including any amendments to those instruments and also including, but not limited to, plats and maps.” *See section 38-33.3-103(13), C.R.S.*
- **Large planned community:** “a planned community that meets the criteria set forth in section 38-33.3-116.3 (1).” *See section 38-33.3-103(17.5), C.R.S.*
- **Planned community:** “a common interest community that is not a condominium or cooperative.” *See section 38-33.3-103(22), C.R.S.*

Section 38-33.3-205 - Contents of Declaration

- For Declarations recorded on or after July 1, 1992, the declaration must contain the following information:
 - The names of the common interest community and the association and a statement that the common interest community is a condominium, cooperative, or planned community;
 - The name of every county in which any part of the common interest community is situated;
 - A legally sufficient description of the real estate included in the common interest community;
 - A statement of the maximum number of units that the declarant reserves the right to create;
 - In a condominium or planned community, a description, which may be by plat or map, of the boundaries of each unit created by the declaration, including the unit's identifying number;
 - A description of any limited common elements;

Section 38-33.3-205 - Contents of Declaration (con't)

- An allocation to each unit of the allocated interests;
- Any restrictions on the use, occupancy, and alienation of the units;
- The recording data for recorded easements;
- Reasonable provisions concerning the manner in which notice of matters affecting the common interest community may be given to unit owners by the association or other unit owners;
- A statement, if applicable, that the planned community is a large planned community and is exercising certain exemptions from the "Colorado Common Interest Ownership Act" as such a large planned community;

Understanding the Relevance and Applicability of CCIOA

- CCIOA is codified in Article 33.3 of Title 38, Colorado Revised Statutes (“C.R.S.”)
- Additionally, common interest communities created before July 1, 1992, are still subject to an older law called the Condominium Ownership Act, Article 33 of Title 38, C.R.S.

Understanding the Relevance and Applicability of CCIOA (con't)

- CCIOA is a set of laws that govern the formation, management, powers, and operation of common interest communities (HOAs) in Colorado.
- While most of the important provisions in CCIOA apply to all common interest communities - regardless of when those communities were created - some provisions apply only to communities created after July 1, 1992.

Pre-CCIOA Communities

- What is a Pre-CCIOA Community?
 - A community whose Declaration was filed prior to July 1, 1992.
- Most of CCIOA will still apply to these communities, with a few notable exceptions.

Pre-CCIOA Communities - Notable Inclusions

Public Policy
Prohibitions (§
106.5)

Amendment of
Declaration (§
217)

Adopt budgets (§
302)

Enforcement (§
123)

Annual
Disclosures (§
209.4)

Responsible
Governance
Policies (§
209.5)

Pre-CCIOA Communities - Notable Exclusions

Creation of Common
Interest Community (§
201)

Termination of
Common Interest
Community (§ 218)

Association's Power to
Assign Future Income
(§ 302(n))

Limitation of Liability
for Directors (§ 303(2))
- Willful or wanton
actions

Insurance (§ 313) -
Waiver of Subrogation,
Allocation of
Deductibles (benefit
and harm)

Pre-CCIOA Communities

- For communities created prior to July 1, 1992, most of the provisions of CCIOA will still apply, with a few notable exceptions, concerning, among other things, the creation and termination of the common interest community:
 - Creation of common interest community (§ 201)
 - Unit boundaries (§ 202)
 - Contents of Declaration (§ 205)
 - Allocation of allocated interests (§ 207)
 - Plat and map requirements (§ 209)
 - Alterations of boundaries between units (§ 211)
 - Termination of CICs (§ 218)
 - Assign future income (§ 302)
 - Powers to deal with Declarant (§ 302)

Pre-CCIOA Communities (con't)

- Limitation of Liability for Directors (§ 303(2))
- Insurance (§ 313)
 - Allocation of deductibles to negligent unit owners

Understanding the Relevance and Applicability of CCIOA to Pre-CCIOA Communities

- Determining which sections of CCIOA apply to a pre-1992 association can be a complex question, as several variables must be considered, including but not limited to:
 - ❖ the date in which the community was created;
 - ❖ the type of community (i.e. co-op, condo, planned community);
 - ❖ the size of the community; and the amount of expenses the community incurs.

Important Provision for both CCIOA and pre-CCIOA communities - Section 38-33.3-209.5

- All communities, regardless of when they were created, must comply with section 209.5 of CCIOA, which requires the adoption of the nine “good governance” policies:
 - (I) Collection of unpaid assessments;
 - (II) Handling of conflicts of interest involving board members, which policies, procedures, and rules and regulations must include, at a minimum, the criteria described in subsection (4) of this section;
 - (III) Conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;
 - (IV) Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines;

Important Provision for both CCIOA and pre-CCIOA communities - Section 38-33.3-209.5 (con't)

- (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; and
- (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.

Why Might a Community “Opt-in” to CCIOA?

- A community might decide to “opt-in” to CCIOA to avail itself of important CCIOA provisions, including, but not limited to:
 - I. Allocation of voting privileges
 - II. Rights and duties concerning common elements
 - III. Requirements for maps and building plans
 - IV. Alteration and subdivision of units
 - V. Easement rights

Procedure for Electing Treatment of CCIOA

- Pre-CCIOA communities may avail themselves of the protections afforded through CCIOA pursuant to section 38-33.3-118, C.R.S.
- Vote must occur at an owners meeting where quorum has been achieved.
- Proper notice must go out, informing owners of the association's intent to be subject to CCIOA
- 67% owner approval
- Statement of election must be recorded with county Clerk and Recorder's office
- MIGHT be easier for the community to accept full treatment of CCIOA because the statutory threshold is lower to exercise this right (67% at the meeting), compared to amending the Declaration which requires a much higher owner rate of approval (67% of ALL owners).

Exemption for Certain Small Communities (Not Applicable to Condominiums)

CCIOA exempts from most portions of the law:

- A cooperative or planned community (note, NOT condominiums) if the cooperative or planned community was created on or after July 1, 1992, and either contains only units restricted to nonresidential use or contains no more than 20 units and is not subject to any development rights; or
- A planned community if the planned community provides in its declaration that the annual average common expense liability of each unit restricted to residential purposes must not exceed \$400, as adjusted annually since July 1, 1999, for changes in the consumer price index.
- Only subject to §§ 105 - 107
- See section 38-33.3-116, C.R.S.

Exemption for Certain Small Communities

- However, a cooperative or planned community that may avail itself of the exemption may elect instead to be subject to the entirety of CCIOA by adopting an amendment to its declaration evidencing its election. See section 38-33.3-116(4), C.R.S.

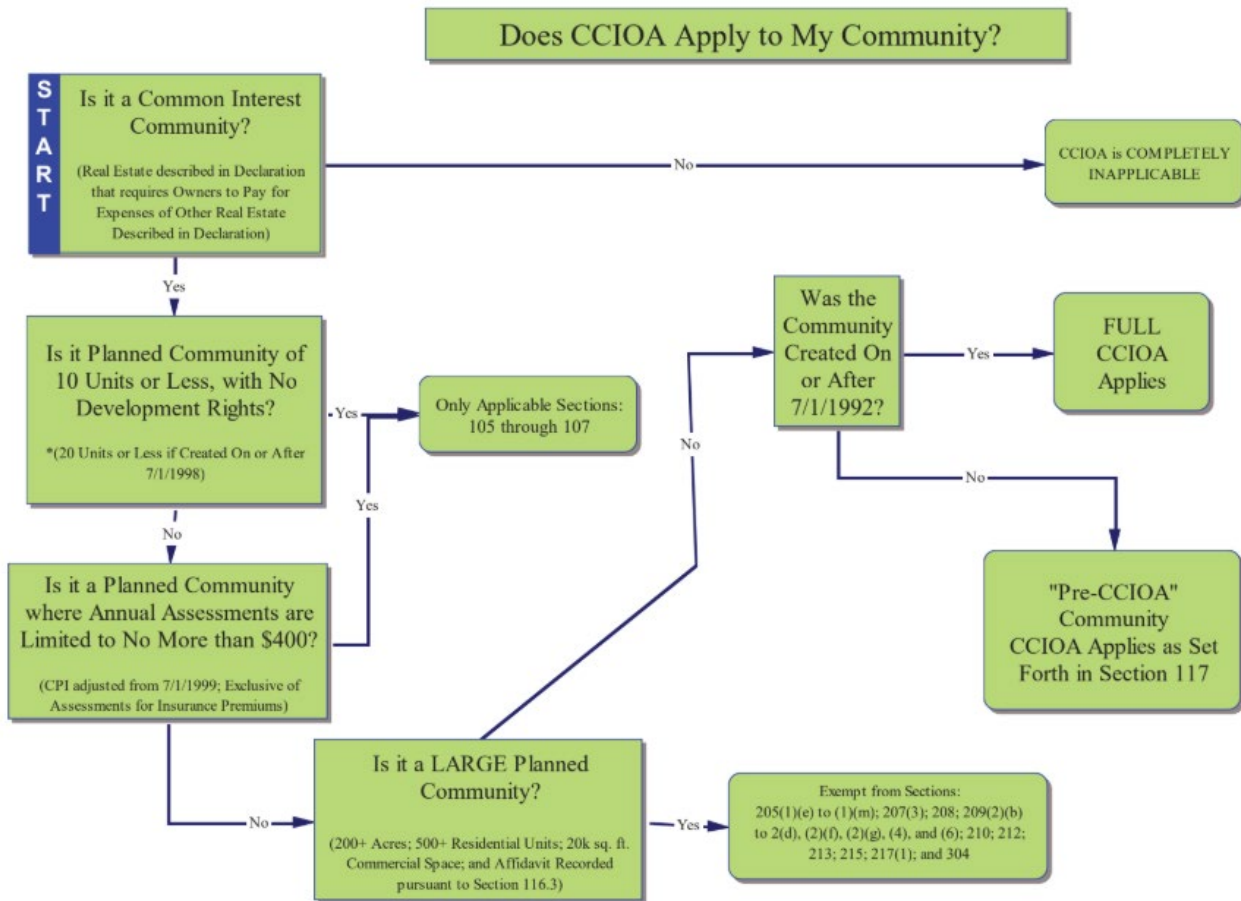
Exemption for Limited Expense Communities

CCIOA exempts from most portions of the law:

Communities whose Declaration limits annual assessments to no more than \$400 (not including insurance premiums and “optional user fees”)

- For these communities, the annual assessment cap must be adjusted annually according to any increase in the consumer pricing index (“CPI”).
- Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year. See U.S. Bureau of Labor Statistics (“BLS”)
- Only subject to §§ 105 - 107
- See section 38-33.3-116, C.R.S.

Does CCIOA Apply to My Community?



Flowchart courtesy of Vial Fotheringham, LLC

Senate Bill 24-021 (New cooperatives and small and limited expense planned communities notification)

CCIOA states that certain cooperatives and planned communities are subject only to a small portion of CCIOA.

Current law allows certain cooperatives and planned communities to claim an exemption from most of CCIOA, provided they meet the specifications outlined in section 38-33.3-116, C.R.S. The new law expands the number of communities that may claim this exemption.

Senate Bill 24-021 (New cooperatives and small and limited expense planned communities notification) (con't 01)

The new law states that communities that meet the following requirements may qualify as a new small cooperative or small limited-expense planned community:

Scenario 1:

- a. Community Type: Must be a cooperative or planned community. Note: condominiums are not eligible.
- b. Community Creation Date: Must have been created on or after July 1, 1992.
- c. Additionally, the community must either:
 - (A) contain units restricted to only nonresidential use; OR,
 - (B) contain no more than 20 units and is not subject to any development rights

Senate Bill 24-021 (New cooperatives and small and limited expense planned communities notification) (con't 02)

The new law states that communities that meet the following requirements may qualify as a new small cooperative or small limited-expense planned community:

Scenario 2:

- a. Community Type: Must be a planned community. Note: cooperatives and condominiums are not eligible.
- b. Additionally, the planned community must provide in its declaration that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, must not exceed four hundred dollars, as adjusted pursuant to section 38-33.3-116(3).

Senate Bill 24-021 (New cooperatives and small and limited expense planned communities notification) (con't 03)

- In addition, the new law permits a qualified cooperative or planned community to bypass this exemption altogether and instead elect to be subject to the entirety of CCIOA. A community that opts to pursue this form of governance is required to adopt an amendment to its declaration in accordance with section 38-33.3-217, C.R.S., evidencing the community's election to be subject to the entirety of CCIOA.

Senate Bill 24-021 (New cooperatives and small and limited expense planned communities notification) (con't 04)

- Please note that neither the HOA Information & Resource Center nor the Division of Real Estate can make a determination of whether your association qualifies.
- Accordingly, carefully reviewing (1) the requirements created by SB24-021 and (2) your association's governing documents should assist in determining whether your association qualifies as a "new small cooperative or small and limited expense planned community" pursuant to section 38-33.3-116, C.R.S. In conducting your analysis, you may also consider speaking with a qualified and licensed Colorado attorney to assist in making this determination.
- In closing, it is important to note that this bill does NOT apply to condominium associations.

HB18-1342 - Allow Pre-Colorado Common Interest Ownership Act Homeowners' Association Members to Veto Homeowners' Association Budget

- Mandated that all pre-CCIOA communities follow the budget veto process found in CCIOA section 38-33.3-303(4)(a).
 - ❖ A budget summary must be mailed out to owners within 90 days after adoption
 - ❖ Set a date for the budget meeting
 - ❖ Allow a majority of all owners - or any larger percentage specified in the Declaration - an opportunity to veto the proposed budget.

Perceived Advantages or Disadvantages to CCIOA vs. Pre-CCIOA communities?

- Depends on what is currently in your Declaration.
- What is the sentiment of your community? “Pro-HOA” vs. “Anti-HOA”
- Would the rights and responsibilities enumerated in CCIOA stand to benefit, or harm, your community?
- For small and limited expense planned communities, these communities are exempt from many of the compliance requirements dictated by CCIOA; however, on the other hand, they do not get to enjoy the wide powers that associations are granted by CCIOA.

What about Registration?

- All common interest communities must register.
- All Pre-CCIOA communities must register (see 38-33.3-117(1.5)(n)).
- While CCIOA does not expressly state small and limited expense planned communities must register, it is the Division of Real Estate's position that all associations should register.
- The Division of Real Estate has records of nearly 11,700 registrants pursuant to section 38-33.3-401, C.R.S. These registrations are comprised of a wide variety of Common Interest Communities: condominiums, cooperatives, HOAs, POAs, road owners' associations, pre-CCIOA communities, CCIOA communities, and limited expense communities. All of these communities have determined that registration is necessary and appropriate because CCIOA states that 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 it under section 38-33.3-123 is suspended until the association is validly registered pursuant to this section." See section 38-33.3-401, C.R.S.
- If you would like to check the registration status of your community, please visit the following link: <https://dre.colorado.gov/hoa-registration-services>.

CCIOA PROVISIONS THAT ARE APPLICABLE TO PRE-CCIOA COMMUNITIES

CCIOA PROVISIONS THAT ARE APPLICABLE TO PRE-CCIOA COMMUNITIES (con't 01)

- § 38-33.3-101. Short title
- § 38-33.3-102. Legislative declaration
- § 38-33.3-103. Definitions
- § 38-33.3-104. Variation by agreement
- § 38-33.3-105. Separate titles and taxation
- § 38-33.3-106. Applicability of local ordinances, regulations, and building codes

CCIOA PROVISIONS THAT ARE APPLICABLE TO PRE-CCIOA COMMUNITIES (con't 02)

- § 38-33.3-106.5. Prohibitions contrary to public policy - patriotic, political, or religious expression - emergency vehicles - fire prevention - renewable energy generation devices - affordable housing - drought prevention measures - child care - definitions
- § 38-33.3-106.7. Unreasonable restrictions on energy efficiency measures - definitions
- § 38-33.3-106.8. Unreasonable restrictions on electric vehicle charging systems - legislative declaration - definitions
- § 38-33.3-107. Eminent domain
- § 38-33.3-108. Supplemental general principles of law applicable
- § 38-33.3-109. Construction against implicit repeal

CCIOA PROVISIONS THAT ARE APPLICABLE TO PRE-CCIOA COMMUNITIES (con't 03)

- § 38-33.3-110. Uniformity of application and construction
- § 38-33.3-111. Severability
- § 38-33.3-114. Remedies to be liberally administered
- § 38-33.3-117. Applicability to preexisting common interest communities
- § 38-33.3-118. Procedure to elect treatment under the "Colorado Common Interest Ownership Act"
- § 38-33.3-119. Exception for small preexisting cooperatives and planned communities
- § 38-33.3-120. Amendments to preexisting governing instruments
- § 38-33.3-120.5. Extension of declaration term
- § 38-33.3-122. Applicability to out-of-state common interest communities
- § 38-33.3-123. Enforcement - limitation
- § 38-33.3-124. Legislative declaration - alternative dispute resolution encouraged - policy statement required

CCIOA PROVISIONS THAT ARE APPLICABLE TO PRE-CCIOA COMMUNITIES (con't 04)

- § 38-33.3-203. Construction and validity of declaration and bylaws
- § 38-33.3-209.4. Public disclosures required - identity of association - agent - manager - contact information
- § 38-33.3-209.5. Responsible governance policies - due process for imposition of fines - procedure for collection of delinquent accounts - definition
- § 38-33.3-209.6. Executive board member education
- § 38-33.3-209.7. Owner education
- § 38-33.3-217. Amendment of declaration - **PARTIALLY APPLICABLE**
- § 38-33.3-221.5. Withdrawal from merged common interest community

CCIOA PROVISIONS THAT ARE APPLICABLE TO PRE-CCIOA COMMUNITIES (con't 05)

- § 38-33.3-301. Organization of unit owners' association
- § 38-33.3-302. Powers of unit owners' association - **PARTIALLY APPLICABLE** •
- § 38-33.3-303. Executive board members and officers - powers and duties - reserve funds - reserve study - audit - **PARTIALLY APPLICABLE**
- § 38-33.3-303.5. Construction defect actions - disclosure - approval by unit owners - definitions - exemptions
- § 38-33.3-308. Meetings
- § 38-33.3-310. Voting - proxies - **PARTIALLY APPLICABLE**
- § 38-33.3-310.5. Executive board - conflicts of interest - definitions
- § 38-33.3-311. Tort and contract liability

CCIOA PROVISIONS THAT ARE APPLICABLE TO PRE-CCIOA COMMUNITIES (con't 06)

- § 38-33.3-315. Assessments for common expenses - **PARTIALLY APPLICABLE**
- § 38-33.3-316. Lien for assessments
- § 38-33.3-316.3. Collections - limitations
- § 38-33.3-317. Association records
- § 38-33.3-318. Association as trustee
- § 38-33.3-319. Other applicable statutes
- § 38-33.3-401. Registration - annual fees

CCIOA PROVISIONS THAT ARE INAPPLICABLE TO PRE-CCIOA COMMUNITIES

CCIOA PROVISIONS THAT ARE INAPPLICABLE TO PRE-CCIOA COMMUNITIES (con't 01)

- § 38-33.3-112. Unconscionable agreement or term of contract
- § 38-33.3-113. Obligation of good faith
- § 38-33.3-115. Applicability to new common interest communities
- § 38-33.3-116. Exception for new small cooperatives and small and limited expense planned communities
- § 38-33.3-116.3. Large planned communities - exemption from certain requirements
- § 38-33.3-121. Applicability to nonresidential planned communities
- § 38-33.3-201. Creation of common interest communities
- § 38-33.3-202. Unit boundaries
- § 38-33.3-204. Description of units
- § 38-33.3-205. Contents of declaration
- § 38-33.3-206. Leasehold common interest communities
- § 38-33.3-207. Allocation of allocated interests
- § 38-33.3-208. Limited common elements
- § 38-33.3-209. Plats and maps

CCIOA PROVISIONS THAT ARE INAPPLICABLE TO PRE-CCIOA COMMUNITIES (con't 02)

- § 38-33.3-210. Exercise of development rights
- § 38-33.3-211. Alterations of units
- § 38-33.3-212. Relocation of boundaries between adjoining units
- § 38-33.3-213. Subdivision of units
- § 38-33.3-214. Easement for encroachments
- § 38-33.3-215. Use for sales purposes
- § 38-33.3-216. Easement rights
- § 38-33.3-217. Amendment of declaration - **PARTIALLY INAPPLICABLE**
- § 38-33.3-218. Termination of common interest community
- § 38-33.3-219. Rights of secured lenders
- § 38-33.3-220. Master associations
- § 38-33.3-221. Merger or consolidation of common interest communities
- § 38-33.3-222. Addition of unspecified real estate

CCIOA PROVISIONS THAT ARE INAPPLICABLE TO PRE-CCIOA COMMUNITIES (con't 03)

- § 38-33.3-302. Powers of unit owners' association - **PARTIALLY INAPPLICABLE**
- § 38-33.3-303. Executive board members and officers - powers and duties - reserve funds - reserve study - audit - **PARTIALLY INAPPLICABLE**
- § 38-33.3-304. Transfer of special declarant rights
- § 38-33.3-305. Termination of contracts and leases of declarant
- § 38-33.3-306. Bylaws
- § 38-33.3-307. Upkeep of the common interest community

CCIOA PROVISIONS THAT ARE INAPPLICABLE TO PRE-CCIOA COMMUNITIES (con't 04)

- § 38-33.3-309. Quorums
- § 38-33.3-310. Voting - proxies - **PARTIALLY INAPPLICABLE**
- § 38-33.3-312. Conveyance or encumbrance of common elements
- § 38-33.3-313. Insurance
- § 38-33.3-314. Surplus funds
- § 38-33.3-315. Assessments for common expenses - **PARTIALLY INAPPLICABLE**
- § 38-33.3-316.5. Time share estate - foreclosure - definitions

Questions?

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Division of Real Estate YouTube Channel:

<https://www.youtube.com/c/DORADivisionRealEstate>