



**COLORADO**  
Department of  
Regulatory Agencies  
Division of Real Estate

**Welcome**

New HOA Members

# Disclaimer



- **Note: The Information provided during this presentation is for educational purposes only and is not meant to provide or to be construed as legal advice. Any legal questions should be directed to your attorney**

# How an HOA is Created

- Created by recording a declaration with the Clerk and Recorders Office in the county where the property is located.
- A declaration must include;
  - Name of the CIC and its county;
  - A legal description of the real-estate (plats and map);
  - A statement of the max number of units the declarant reserves the right to create;
  - Description of Common elements;
  - Any restriction on use, occupancy and alienation
    - see section 38-33.3-205 of CCIOA

# What Does it Mean To Buy into an HOA

- If you purchased your home in an HOA you are signing a contract stating that you are going to follow the restrictive covenants rules and regulations of that HOA.
- You should review your HOA governing documents to avoid disputes.

# Relevant Laws

- CCIOA – Colorado Common Interest Ownership Act
  - C.R.S. §38-33.3-101 to §38-33.3-402
- Colorado Revised Non-Profit Corporation Act
  - C.R.S. §7-121-101, et. seq.
- ADA & Fair Housing Laws
- Governing documents  
(Declarations or CC&R's, Bylaws, Rules & Regs)

# Level of Authority

- Declarations aka Covenants
  - Copies can be obtained at the Clerk and Records Office in your county.
- Articles of Incorporation
  - Copies can be obtained from the Secretary of State.
- Bylaws
  - Copies can only be obtained from your HOA board or management company.
- Rules and Regs
  - Copies can only be obtained from your HOA board or management company.
- CCIOA & Non Profit Act
  - Copies can be obtained online form the HOA Information and Resource office.

# Declarations

- An association w/o specific authorization in the declaration, may:
  - Adopt and amend bylaws, rules and regs;
  - Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses;
  - Hire and terminate managing agents and other employees, agents and independent contractors;
  - Institute, defend or intervene in litigation or administrative proceedings;
  - Make contracts and incur liabilities;
  - Regulate the use, maintenance , repair, replacement and modification of common elements ;
  - Cause additional improvements;
  - Grant easements, leases, licenses and concessions through or over the common elements;
  - Impose and receive payments, fees or charges for the use rental or operation of common elements;
  - Impose charges for late payment of assessments;
  - Provide indemnification of its officer and board;
  - Exercise powers in the declaration or bylaws;
  - Exercise all other powers that may be exercised in this state by legal entitles of the same type as the association ; and
  - Exercise any other powers necessary and proper for the governance and operation of the association.

# Bylaws

- Bylaws must provide:
  - Number of board members and titles;
  - Election process & removal process;
  - The qualifications, powers, duties and terms of board members;
  - Powers the board may delegate to others ;
  - A method of amending the bylaws; and
  - Bylaws may provide for any other matters the association deems necessary & appropriate.



# Governance Policies

- An HOA must adopt policies, procedures, rules and regs concerning
  - Fines & Collection of unpaid assessments
  - Handling conflict of interest
  - Enforcement
  - Conduct of meetings
  - Inspection of association records
  - Investment of reserve funds
  - Procedures for adopting/amending policies, procedures and rules
  - Procedures for addressing disputes

# Other Important Legislation

- **HB12-1237**: Disclosures
- **HB13-1276**: HOA Debt Collection Limitations

# Association Powers; Enforcement

- An association can enforce by
  - Fining;
  - Sending accounts to collection;
  - Placing a lien; and
  - Filing a civil action;

# Association Powers; Enforcement

- Fines
  - The association may not fine a unit owner for a violation unless:
    - There is a policy governing the imposition of fines which must include
      - A fair and impartial fact finding process.

# Association Powers; Enforcement

- Collections
  - In collecting past-due assessments and other delinquent payments the association shall
    - Adopt and comply with their collection policy
    - Make a good faith effort to coordinate w/ the unit owner to set up a 6 month payment plan
      - This section does not apply if the unit owner does not occupy the unit or obtained the unit as a result of a foreclosure

# Association Powers; Enforcement

- Liens
  - The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner.
  - The association has a super lien meaning it has priority over all other liens
  - Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required
  - A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of assessments become due.
  - The association's lien may be foreclosed by any of the following means
    - Similar manner as a mortgage on real estate
    - If delinquency exceeds 6 months (failing to comply with payment plant)
- Note: If notice of delinquency is not provided an HOA cannot place a lien

# Registration

- Every unit owner's associations must register with the Division of Real Estate and renew the registration annually (38-33.3-401(1))
- Associations must also register with the Secretary of State and send in annual reports.
- Failing to register with the Division prohibits an association from imposing or enforcing a lien for assessment or to use any of its enforcements mechanisms until the registration becomes valid.

# Registration Cont.

- Note that:
  - The Division of Real Estate does not enforce the registration provision.
  - Can be used as a defense in a civil action.
  - There are questions as to whether past due assessments can accrue during the period of the HOA's non-compliance. Up to the court's judicial determination.
  - An Attorney or HOA can request the Division of Real Estate to provide a CERTIFIED REGISTRATION LETTER to verify that the HOA is validly registered and when it was initially registered.



# Homeowners Rights for Resolution – The HOA Center

- Reach out to the HOA Information Center
  - Provide information to homeowners regarding their basic rights and responsibilities under the Colorado Common Interest Ownership Act “CCIOA”.
  - Gather, analyze and report information through complaints and HOA registration.
  - Create resource materials.
  - Provide education and forums.
  - Provide a website with information to public.
  - Work with homeowners, industry groups and professionals.
  - Register HOAs - §38-33.3-401(1) C.R.S.
  - Provide an Annual Report.

# Homeowners Rights for Resolution -The HOA Center Cont.

- Note
  - 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.

# Homeowners Rights for Resolution

## - ADR

- Alternative Dispute Resolution
  - CIC are encouraged to adopt protocols that make use of mediation or arbitration as alternatives to, or preconditions upon, the filing of a complaint between a unit owner and association in situations that do not involve an imminent threat to the peace, health, or safety of the community.
  - Any controversy between an association and a unit owner arising out of the provisions of this article may be submitted to mediation by agreement of the parties prior to the commencement of any legal proceeding
  - The mediation agreement, if one is reached, may be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process without prejudice.
  - If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief
  - The declaration, bylaws, or rules of the association may specify situations in which disputes shall be resolved by binding arbitration;

# Homeowners Rights for Resolution -Removal of Directors

- Look first to your association bylaws, as they usually include a provision to remove board members, as well as the procedure for removal and under what circumstances.
  - Commonly, there is a requirement that a certain number or percentage of owners must sign a petition requesting a special meeting to remove a board member or members.
  - The association must then schedule and notice that special meeting to allow the owners a vote to remove those board members.
    - Typically, this is done at a special owner meeting instead of an annual owner meeting due to the timing of the removal and meeting notice provisions.
- The Revised Colorado Non-Profit Act does allow members of a nonprofit corporation to remove board members at an owner meeting noticed specifically for that purpose, or by a judicial proceeding

# Homeowners Rights for Resolution -Removal of Directors

- **§ 7-128-108 Non-Profit Act**
- The voting members may remove one or more directors elected by them with or without cause unless the bylaws provide that directors may be removed only for cause
- If a director is elected by a voting group, only that voting group may participate in the vote to remove that director
- Directors may be removed as follows;
  - Subject to section 7-127-208 (3), a director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors
  - A director elected by voting members may be removed by the voting members only at a meeting called for the purpose of removing that director, and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director
  - A director elected by the board of directors may be removed with or without cause by the vote of a majority of the directors then in office or such greater number as is set forth in the bylaws; except that a director elected by the board of directors to fill the vacancy of a director elected by the voting members may be removed without cause by the voting members, but not the board of directors.

# Homeowners Rights for Resolution

- Taking the matter to court.
  - Generally expensive but the ultimate way to resolve a conflict between the HOA and a member.

# Homeowner Rights -Election, appointment and designation of directors

- § 7-128-104 of the Non Profit Act - All director shall be elected by the voting members at each annual meeting of the voting members.
- Annual election.
- Voting in person or by proxy.
- Election monitoring.
- Election disputes.
- Quorums: **§38-33.3-309, C.R.S.**
  - (1) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent, or, in the case of an association with over one thousand unit owners, ten percent, of the votes which may be cast for election of the executive board are present, in person or by proxy at the beginning of the meeting.
  - (2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting or grant their proxy, as provided in section 7-128-205 (4), C.R.S.

# Homeowner Rights -Election, appointment and designation of directors Cont.

- Under CCIOA § 38-33.3-310
  - Votes for contested positions on the board are by secret ballot.
  - Ballots shall be counted by a neutral third party or by a committee of volunteers.
  - Such volunteers shall be unit owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the board or another person presiding during that portion of the meeting.
  - The volunteers shall not be board members and, in the case of a contested election for a board position, shall not be candidates



# Proxies

- **§7-127-203 of Colorado Non Profit Act**
  - Unless otherwise provided in the bylaws, a member is entitled to vote either in person or by proxy
  - A proxy must be:
    - A written statement
    - Contain the name of who is receiving the proxy
    - Signed & dated by the member giving the proxy
  - Becomes effective against the CIC when its received
  - Can be delivered:
    - By mail'
    - Email
    - Or in person
  - Is revocable by the member:
    - By voting in person;
    - Signing and delivering to the a board member or designated vote tabulator a writing stating that the proxy is revoked; or
    - by providing a subsequent proxy form.

# Boards

- Must act in good faith
- With the care an ordinary prudent person in a like position would act under similar circumstances
- In the best interest of the CIC
- Are not liable if they rely on info, opinions, reports or statements including financial statements by
  - Legal counsel
  - Specialist such a public accountant
  - Or employees who the director believes is reasonably competent

## Boards; Terms of Directors §7-128-105

- Check bylaws
- In the absence of any term stated in the bylaws, the term of each director shall be one year.
- Unless otherwise provided in the bylaws, directors may be elected for successive terms.
- Despite the expiration of a director's term, a director continues to serve until the director's successor is elected, appointed, or designated or until there is a decrease in the number of directors.

# Homeowner Rights -Vacancy of the Board

- If a vacancy occurs
  - A board member may be appointed by the board of directors; or
  - The member may vote to fill the vacancy.

# Boards; Removal of an Appointed or Designated Director

- **§ 7-128-108 –**

- Unless otherwise provided in the bylaws;
  - An appointed director may be removed without cause by the person appointing the director;
  - The person removing the director shall do so by giving written notice of the removal to the director and to the nonprofit corporation; and
  - A removal is effective when the notice is received by both the director to be removed and the nonprofit corporation unless the notice specifies a future effective date.
- A designated director may be removed by an amendment to the bylaws deleting or changing the designation.

# Boards Conflict of Interest

- Section 7-128-501 of the Non Profit Act
- It is not a conflict of interest if:
  - The material facts as to the director's relationship or interest and as to the conflicting interest are disclosed or are known to the board of directors or the committee and it is approved
  - The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the members entitled to vote thereon and it is approved
  - The conflicting interest transaction is fair as to the nonprofit corporation

# Homeowner Rights – Disclosures

- What must be disclosed
  - Name of the association and its DA or management company.
  - Valid address and contact info for the association and DA/management company.
  - W/in 90 days of the end of the fiscal year:
    - Date the fiscal year commences
    - Operating budget
    - Current assessments (regular/special)
    - Annual financial statement
    - Most recent financial audit or review
    - A list of all insurance policies
    - Bylaws, articles, rules and regs
    - Meeting Minutes
    - Responsible governance policies

# Homeowner Rights– Disclosures

## Records That Must be Maintained & Produced

- Records defined in declaration or bylaws;
- Detailed records of receipts and expenditures affecting the operation and administration of the association;
- Records of claims for construction defects and amounts received;
- Minutes of all meetings ;
- Written communications among and votes cast by the boards that are directly related to an action taken by the board w/o meeting;
- A list of names & mailing addresses of all owners;
- The associations current governing documents;
- Financial statements of the last 3yrs and tax returns of the last 7yrs;
- Names, emails and physical address of the current board members & officers;
- Annual report delivered to the SOS;
- Detailed Financial records;
- Current Reserve Study;
- Current written contracts for work performed w/in the past 2yrs;
- Records of board committee actions;
- Ballots, proxies and other records related to voting by owners for 1yr after the election action or vote;
- Resolutions adopted by the board relating to the characteristics, qualifications, rights, limitation and obligations of members; and
- All written communications w/in the past 3yrs sent to all owners.



# Homeowner Rights– Disclosures Records that *May be Withheld*

- Architectural drawings, plans and designs
- contracts, leases, bids or records related to transactions/purchases or provide goods/ services currently in or under negotiations;
- Communications w/ legal counsel
- Disclosures of info in violation of law;
- Records of an executive session
- Records relating to or concerning individual units

# Homeowner Rights– Disclosures Records that *Must be Withheld*

- Personnel salary;
- Personal identification of members such as telephone numbers, email addresses, and SSN.

# Disclosures - Ways to Disclose

- Disclosures can be done by:
  - Posting on a web page;
  - Via first-class mail;
  - Email;
  - Binder at the associations principal place of business;
  - Mail; or
  - Personal delivery
- Who covers the cost?
  - A reasonable charge may be collected from the requester.
- An association is not obligated to compile or synthesize information

# Homeowners Rights -Meetings

- Three types of meetings, meeting of the unit owners, special meetings and board meetings.
- Unless otherwise provided in the governing documents, these meetings are open to all member of the association or to any person designated by a unit owner in writing as the unit owner's representative.
- Agendas shall be made reasonable available.

# Homeowners Rights -Meetings Cont.

- Owners' meetings
  - Must be held at least once a year
  - Notice of the owners' meeting must be given not less than ten (10) days, and no more than fifty (50) days in advance of any such meeting.
    - Notice can be hand delivered, emailed, sent prepaid by US mail or physically posted in a conspicuous place
    - Must include
      - Time and place of meeting
      - Items of the agenda
      - And any proposed amendments, budget changes or proposal to remove a member
- Special meetings
  - Can be called by the president, a majority of the board or by 20% of unit owners (or lower per governing docs)
  - Notice must be give w/in 30 days of the demand for special meeting.
- Board Meetings
  - Agendas are to be made reasonable available
  - Notice requirements for board meetings are usually described in the association's bylaws. CCIOA is silent on the notice requirements for executive board meetings.
- Working Sessions
  - Not defined
  - Usually for a specific purpose
  - Open if not in executive session
  - No decision being made so no right to speak
  - Business meetings.

# Homeowners Rights– Meetings Cont.

- Executive Sessions
- **§38-33.3-308(4), C.R.S. – requiring the association board of directors to limit their discussions in executive sessions to specific enumerated topics.**
- The members of the executive board or any committee thereof may hold an executive or closed door session and may restrict attendance to executive board members and such other persons requested by the executive board.
- Matters for discussion by an executive or closed session are limited to;
  - Matters pertaining to employees of the association or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the association;
  - Consultation with legal counsel or review of or discussion relating to any written or oral communication from legal counsel;
  - Investigative proceedings concerning possible or actual criminal misconduct
  - Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure; and
  - Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy
- Prior to going into executive session, the chair shall announce the general matter of discussion.
- No rule or regulation of the board or any committee thereof shall be adopted during an executive session
- Usually the minutes of an executive session do not state the details of what was discussed during that executive session but must indicate that an executive session was held and the general subject matter.

# Meetings Cont.

## Colorado Non-Profit Act provisions

- **Meetings:**

- §7-121-402. Notice.
  - In person; telephone, telegraph, teletype, electronically transmitted, or other form of wire or wireless communication; or by mail or by private carrier.
- §7-127-101. Annual and regular meetings.
  - For members.
- §7-127-102. Special meeting.
  - Procedures to call special meetings.
- §7-127-103. Court-ordered meeting.
  - Application to the Court to hold or notice member meeting.
- §7-127-104. Notice of meeting.
  - Notice consistent with its bylaws and in a fair and reasonable manner.

# Meetings Cont.

## Colorado Non-Profit Act provisions

### Meetings and Action of the Board:

- §7-128-201. Meetings.
  - May hold regular or special meetings.
- §7-128-202. Action without meeting.
  - Process for holding such meetings and notice.
- §7-128-203. Notice of meeting.
  - Unless otherwise provided in articles 121 to 137 of this title or in the bylaws, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.
- §7-128-204. Waiver of notice.
  - Director may waive notice of meeting.
- §7-128-205. Quorum and voting.
  - Unless a greater or lesser number is required by the bylaws, a quorum of a board of directors consists of a majority of the number of directors in office immediately before the meeting begins.
- §7-128-206. Committees of the board.
  - Board of directors may create one or more committees of the board and appoint one or more directors to serve on them.



# Homeowner Rights – Running Meetings

- At an appropriate time determined by the board, but before the board votes on an issue under discussion, unit owners or their designated representatives shall be permitted to speak regarding that issue.
- The board may place reasonable time restrictions on persons speaking during the meeting.
- If more than one person wants to address an issue and there are opposing views, the board shall provide for a reasonable number of persons to speak on each side of the issue
- *Recommendation* – keep a copy of CCIOA with you at all meetings & for contentious meetings consider using Roberts Rules

# Homeowners Rights for Resolution– Meeting Minutes

- Association’s record of approved action.
- Written minutes.
- Recordings.
- Contents of minutes (detailed wording of the motion and result of the vote).
- Detail of the minutes varies and is usually brief.
- Approval of minutes (at next board meeting or annual meeting – sometimes earlier).
- Publication and accessibility of minutes.
- Availability for prospective purchasers.
- HB12-1237: CIC Record-Keeping
  - § 38-33.3-317(1)(c), C.R.S. – Minutes of all meetings of its unit owners and executive board, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by any committee of the executive board.
  - § 38-33.3-317(2)(a), C.R.S. – records maintained by the association must be available for examination and copying by a unit owner or the owner's authorized agent (unless excepted).

# Homeowner Rights - Assessments

- There are two types of assessments regular (Dues) and special.
- Regular assessments are dues that may be payable yearly, quarterly or monthly and go to the overall operation and maintenance of the association i.e. reserve fund, insurance and legal fees.
- Special assessments are those assessment made on a one time basis for major repairs, replacement or new contraction.
- You will want to make sure you are aware of any upcoming special assessments - ask the title company or review meeting minutes for any indication of a special assessment.

# Homeowner Rights– Budgets

- CCIOA 38-33.3-303
- Right to veto budget
  - the board adopts a budget, provides a copy of this budget to the owners and sets a meeting with the owners to provide an opportunity to veto the budget.
  - If the veto fails then the budget passes.
  - if the budget is vetoed the last budget that passed will remain in effect.
- Exception
  - If the association's declaration sets a maximum assessment amount or limits the increase in an annual budget to a specific amount and the budget proposed by the board does not exceed such maximum or limit then no veto power will exist with respect to this specific HOA.
  - The board will still be required to send notice of the budget and set a meeting in compliance with CCIOA.

# Homeowners Rights -Dues

- HOAs should have a policy governing the collection of unpaid regular assessments which includes:
  - The date on which assessments must be paid;
  - When an assessment is considered past due;
  - Any late fees and interest which may be imposed;
  - Any returned-check charges;
  - Whether an opportunity for a payment plan exists and the circumstances under which the unit owner is entitled to enter into a payment plan;
  - Provide notice to a unit owner before sending an account to a collection agency or to attorney legal action;
  - The total amount due;
  - The action required to cure the delinquency; (must provide 30days to cure)
  - The method by which payments may be applied to a delinquent account; and
  - The legal remedies available to the association to collect.

# Homeowners Rights –Due Increases

- the HOA determines how much it needs to collect from each owner in periodic dues to meet the budget
- The HOA might pay for any costs that arise outside the budget by collecting a special assessment from each owner
- Because costs are constantly on the rise due to inflation, most HOA's annual budgets require annual increases. As a result, most HOAs need to collect more from the owners in dues each year
  - There are no regulation on assessment amounts or due increases with the exception of those living in a limited expense planned communities.
  - check you governing documents to learn if your HOA has any limitations on how much the HOA can increase dues and assessments (i.e. limited expense planned community).
  - your best option to prevent unnecessary increases might be to become familiar with the workings of the board, and get involved in the HOA's budget process

# Homeowners Rights– Maintenance

- The association is responsible for maintenance, repair and replacement of common elements
  - Owners should afford the association and their agents reasonably necessary access.
- Maintenance, repair or replacement of any drainage structure or facilities or other public improvements required by local gov't is the responsibility of the association
  - Unless the damage was caused by the negligence of the unit owner
- Note: There is no time limit on how long the Association has to fix a problem.

# Homeowner Rights- Insurance

- The association must maintain;
  - Property insurance on the common elements worth the full replacement cost of the insured property
  - Commercial general liability insurance against claims and liabilities arising in connection w/ the ownership, existence, use or management of the common elements
  - Insurance does not need to include improvements and betterments installed by unit owners.
  - The association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment.
- Homeowners must maintain their own separate insurance generally covering the inside of their homes
  - Look into HO6 insurance.



# Homeowner Rights– Termination of CIC

- A CIC may be terminated by an agreement or vote of 67% and an execution of a termination agreement filed with the Clerk and Records Office.
- If it's a condo community all common elements must be sold following the termination and the proceeds must be distributed amongst the owners.
- If an association has real-estate it can sell that real-estate and the proceeds must be distributed amongst the owners.
- If all or a portion of the common elements are not sold, title to those elements vests in the unit owners as tenants in common

# THANK YOU

*DORA is dedicated to preserving the integrity of the marketplace and is committed to promoting a fair and competitive business environment in Colorado.*

*Consumer protection is our mission.*



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