

A Smorgasbord of Legal Stuff for HOA Governance

Presented for: City of Greeley
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COLORADO STATUTES



**Colorado Common Interest
Ownership Act
("CCIOA")
C.R.S. § 38-33.3-101, et al.**



CCIOA Applicability

- Pre-CCIOA Communities:
 - Created prior to July 1, 1992
 - Some provisions applicable C.R.S. 38-33.3-117
- Post-CCIOA Communities:
 - Created on or after July 1, 1992
 - All provisions



CCIOA Applicability (cont.)

- Exceptions
 - 100% non-residential planned communities 3-121
 - Small and limited expense communities 3-116
 - Large planned communities 3-116.3
 - Small pre-existing planned communities 3-119



- Prohibitions contrary to public policy (all CICs)
C.R.S. §38-33.3-106.5, 106.7 and 106.8

✓ Signs and flags	✓ Renewable Energy (e.g., solar panels)
✓ Religious symbols	✓ Energy efficiency measures (e.g., evap coolers, clotheslines)
✓ Emergency vehicles	✓ EV Charging Stations
✓ Daycares	
✓ Xeriscape (and vegetable gardens!)	



- Statute of limitations (all CICs) 3-123
 - Construction violations
 - One year
- Legal fees (all CICs) 3-123
 - Collection: may require reimbursement
 - Covenant Enforcement: may seek reimbursement



- Creation of CIC (post-CCIOA) 3-201
 - Must record declaration
 - Must record plat / condo map
- Limited Common Element (post-CCIOA) 3-208
 - Designating LCEs
 - Swapping LCEs



- **Public Disclosures (all CICs) 3-209.4 (1)**
 - Laundry list of items that must be disclosed
 - Info disclosed w/in 90 days of developer transition
 - Info disclosed w/in 90 days of end of each fiscal year
 - No cost to owners
 - Methods of disclosure:
 - Website w/ notice of website address via mail or e-mail
 - Maintain binder at Assn's principal place of business; or
 - Mail or personal delivery



- **Required Policies (all CICs) 3-209.5**
- **Owner Education (all CICs) 3-209.7**
 - Method of education is up to you, as long as within appropriate topics
- **Declaration Amendment 3-217 (Some apply to all CICs, others to post-CCIOA only)**



The diagram shows a central circle labeled "POLICIES & PROCEDURES" surrounded by five smaller circles: "Develop", "Agree", "Implement", "Monitor & Review", and "Update", connected by arrows in a clockwise cycle.



- **Board Powers 3-302 (1) (some all CICs, others Post-CCIOA only)**
 - Laundry list of default powers of the Board
- **Executive Board 3-303**
 - (1)(b) Info available to all directors (all CICs)
 - (3)(a) Amendment of Bylaws (post-CCIOA)



- Executive Board 3-303 (cont.)
 - (4)(a) Budget veto process
 - Board adopts budget
 - Summary provided to all owners
 - Meeting to consider budget (no quorum necessary)
 - Need majority of all owners (or higher requirement stated in Declaration) to veto or automatically ratified
 - **Exception:** Pre-CCIOA AND Declaration contains \$\$ cap, still hold meeting but no opportunity to veto




- Executive Board 3-303 (cont.)
 - (4)(b) Audit (all CICs): Required if both are met: (i) Assn has annual revenues or expenditures of at least \$250k AND (ii) Audit requested by owners of at least 1/3 of units.
 - (8) Removal of Board (post-CCIOA):
 - 67% of Owners, as long as quorum is present



- Owner Meetings (all CICs) 3-308
 - Timeframe: 10 to 50 days
 - Method: Mail or personal delivery
 - Physical posting in conspicuous place; Email
- Special Meetings of Members (all CICs) 3-308
 - Called by Board President or majority of Board, or
 - Owners having 20% of voting power (or lower % specified in bylaws)



- Board Meetings (all CICs) 3-308
 - Open meetings
 - To owner, designated representative
 - Owner participation before Board takes action
 - Executive session
 - Categories should be in your conduct of meeting policy
 - No adoption of rule/reg or amendment to Articles or Bylaws
 - Minutes



- Quorum (post CCIOA) 3-309
 - Default requirement
 - 20% if less than 2000 units
 - 10% if more than 2000 units
- Voting/proxies 3-310
 - Secret ballot for contested elections (all CICs)
 - Votes may be cast in person or via proxy (11 month cap)
 - Ballots counted by neutral third parties



- Insurance (post-CCIOA) 3-313
 - Condos – property insurance on Common Elements AND Units, as originally constructed
 - May exclude finished surfaces, and betterments and improvements
 - Adopt claims submission/ deductible policy
 - Assn's insurance is primary
 - Must have fidelity coverage for 2 months of assessments + everything in reserves
 - D&O not required, but highly recommended



- Assessments (post-CCIOA) 3-315
 - (3)(a) LCE expenses
 - (3)(b) common expenses benefitting less than all
 - (4) common expenses caused by misconduct
- Collections – limitations (all CICs) 3-316.3
 - Must adopt a compliant collection policy
 - 18-month payment plan
 - Application of payments
 - Penalty for violating foreclosure laws



- Association Records (all CICs) 3-317
 - (1) Sole records of Assn; (3) Records that may be withheld; (3.5) Records that must be withheld
 - At request of owner or owner's authorized agent
 - No longer requires proper purpose
 - Timeframe for inspection/production
 - Cost of labor & material, for copies of Assn records
 - No obligation to compile



- Registration of Associations (all CICs) 3-401
 - Must annually register with DORA
 - Must annually pay fee unless annual revenues of \$5000 or less
 - Penalties for failure to comply with the above
 - Suspension of lien rights
 - Suspension of enforcement rights



**Colorado Revised Nonprofit Corporation Act (“Nonprofit Act”)
C.R.S. § 7-128-101, et al.
Applicable to all associations**



Action By Written Ballot

- CRS 7-127-109
 - Vote by written ballot in lieu of meeting
 - Info required on ballot (include Yes or No)
 - Info required in solicitation letter (number that meets quorum, deadline date/time, percentage to approve)
 - Enough info to make informed decision
 - Timeframe to collect: 60 days from first signed ballot



Proxies

- CRS 7-127-203 (for homeowner meeting)
 - What is it? Who can be proxy?
 - What needs to be on form
 - General or Directed
- CRS 7-128-205(4) (for Board meeting)
 - Right must be in Bylaws
 - To Director only & must be Directed Proxy



Board of Directors

- Qualification – Who can be on Board?
 - CRS 7-128-101
- Number – How many Board members?
 - CRS 7-128-103
- Term – How long does Board member serve?
 - CRS 7-128-105



Board Action Without a Meeting

- Check Bylaws first
- CRS 7-128-202 (action by email)
 - Email to all stating: (i) proposed action, (ii) deadline, (iii) that failure to respond means you've abstained
 - By deadline: (i) vote, (ii) fail to respond, and (iii) no demand for meeting
 - Yes votes must equal or exceed the # of votes needed to approve action if ALL directors in office voted



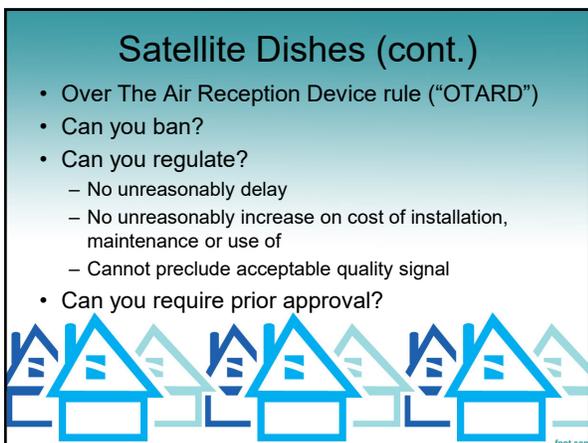
Board Standard of Conduct

- CRS 7-128-401
 - Standard of care: (i) in good faith, (ii) prudently, and (iii) in best interest of association
 - Rely on experts to make informed decision
 - Business judgment rule – protection from liability!!









Bankruptcy Code



Bankruptcy

Do not pass Go,
do not collect \$200



Bankruptcy Code (cont.)

- Chapter 7 (aka liquidation)
 - How does it affect the association?
- Chapter 13 (aka reorganization)
 - How does it affect the association?



Fair Housing Amendments Act (“FHAA”) – Discrimination Laws

- Federal Fair Housing Act
 - 42 U.S.C. §§ 3601 – 3619
- Colorado Civil Rights Act
 - C.R.S. § 24-34-501, et seq.



FHAA – Discrimination (cont.)

What is discrimination under the FHAA?
 Treating individuals differently with respect to sale, rental, or use of a dwelling based on one of the following protected classes:

- Race
- Creed (State Only)
- Color
- Religion
- Sex
- **Handicap/Disability**
- Familial Status
- Marital Status (State Only)
- National Origin
- Ancestry (State Only)
- Sexual Orientation (State Only)



FHAA – Discrimination (cont.)

Person with a (i) **Disability** is entitled to a (ii) **Reasonable Accommodation**

- Definition of Disability
 - Physical or mental impairment that: (i) substantially limits one or more life activities, (ii) Record of having such impairment, (iii) Being regarded as having such impairment



FHAA – Discrimination (cont.)

Vast range of disabilities:
 Orthopedic, visual, speech & hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, AIDS, mental retardation, emotional illness, drug addiction (other than addiction caused by *current*, illegal use of a controlled substance) and alcoholism.



FHAA - Discrimination (cont.)

- Definition of Reasonable Accommodation
 - Change, exception, or adjustment to a rule, policy, practice, or service necessary for person with disability to have equal opportunity to use and enjoy unit and community.
- Accommodation must be related to disability
- Accommodation must be reasonable



FHAA (cont.)

The Emotional Support Animal ("ESA")

- Person is disabled and needs animal to allow equal use and enjoyment of unit and community.
- Disability that is Apparent vs. Not Apparent
 - Can request verification if not apparent
- Often with ESAs disability not apparent
 - ANY animal
 - No training/certification necessary
 - Not "pets"

My emotional support animal is coffee.



FHAA (cont.)

• FAQs

- What if the ESA is a pit bull?
- What if wants 2 pets and there's a 1-pet per Unit cap?
- What if animal causes damage/injury?
- Does ESA have to have some kind of certification?
- Can I require person to get insurance for ESA?
- Can I charge a pet fee or deposit?
- Can ESA be temporary?
- I can keep out of pool area, right?



FHAA – Discrimination (cont.)

How to keep association out of trouble:

1. Adopt a Reasonable Accommodation/Modification Policy
2. Review restrictions, rules & regs for discriminatory language
3. Consult your attorney
4. Enforce in a uniform and consistent manner
5. Engage the individual seeking an accommodation or modification in an interactive dialogue
6. Be professional



FHAA– Discrimination (cont.)

Other Discrimination Issues

- “No one under the age of 18 in swimming area.”
- “Holiday lights may be installed from December 1 through December 31st only.”
- “No playing on the Common Area”
- “No group homes.”



Americans with Disabilities Act (“ADA”)

- ADA compliance for places of public accommodation.
 - Most assns are private communities
 - What if rent out amenities to general public?
 - What if swim teams use swimming pool?
 - Dog or miniature pony only



Housing for Older Persons Act (“HOPA”)

Creates an exemption for communities designed specifically for older residents. If qualified, exempted from familial status discrimination.

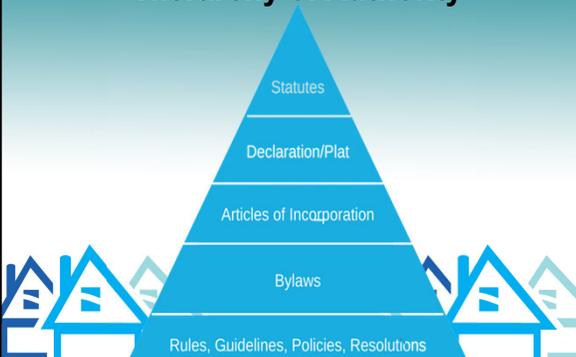
- 80% occupancy rule
- Publish/adhere to policies/procedures demonstrating intent to be a HOPA community
- Comply with HUD regulations on age verifications



GOVERNING DOCUMENTS



Hierarchy of Authority



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graph TD; A[Statutes] --- B[Declaration/Plat]; B --- C[Articles of Incorporation]; C --- D[Bylaws]; D --- E[Rules, Guidelines, Policies, Resolutions];
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Declaration

- They are all different – specific to Association
- Runs with the land
- Creates rights and responsibilities
 - Board Authority
 - Maintenance/Insurance Obligations
 - Assessments
 - Use Restrictions
 - Architectural Review



Declaration (cont.)

- Amendments
 - Limited Amendments
 - Amending and Restating
 - Membership approval
 - Owner approval only – no less than majority, no more than 67%
 - Mortgagee Approval or Notice Requirements
 - Insurance Notice Requirements
 - Court petition process





GOVERNANCE HAS
APROOOOVED!!!



Articles of Incorporation

- Filed with the Colorado Secretary of State
- Creates the nonprofit Corporation
- General Purposes and Powers



Articles (cont.)

- Initial Board and number of Directors
- Limited Liability Provisions
- Dissolution Provisions



Articles (cont.)

- Amending the Articles
 - Owner approval (Board can amend some provisions)



Bylaws

- Operational Manual of the Association/Governance Procedures
- General Board Powers and Duties
- Membership Requirements
- Meeting Requirements
- Voting Rights
- Elections of board Members



Bylaws (cont.)

- Amending the Bylaws – It depends
 - Pre-CCIOA – Board can amend except quorum
 - Post – CCIOA – Board cannot amend powers and duties of Board, terms and qualifications of Directors. Still no quorum.
 - Exceptions – provision stating Board cannot amend.



Using Rules, Regulations, Architectural Guidelines and Policies

What's the difference?

1. Rules
2. ARC Guidelines
3. Policies
4. Resolutions???



Rules and Regulations

- Statement of behavior, the violation of which carries a penalty
- Clarification of current provisions

What's a "commercial vehicle"?

Does "screened from view" mean you can't see it with the naked eye?

How long is a "short-term" rental?

I get to install a vegetable garden. Is a tomato a "vegetable"?



Rules and Regulations (cont.)

- Cannot add use restrictions over Unit/Lots
- Can add use restrictions over Common Elements
- When to adopt them
- Board usually adopts them
 - Cannot adopt in executive session
 - Consult Adoption of Rules, Regs, Policies policy
- Remember they're at bottom of hierarchy chart



Architectural Guidelines

- Rules related to receipt, review, response to submission for modifying Unit/Lot
- Cannot add new criteria for review or new scope of review
- Can clarify aesthetics, specs and materials, process
- Who adopts? Document specific
- Bottom of hierarchy chart




Policies

What they can't do

- Established by the Board
- May not conflict with the law
- May not conflict with anything in the 3 primary documents *
- May not create requirements without general authority in the primary documents
- May not be more restrictive
- May not create or add "Use Restrictions"



Policies (cont.)

- May not create exceptions
- May not add Board Powers

-ESTIMATE POLICY-
If you ask for an estimate and we do the job, staying within the estimate, you will be charged a nominal surcharge as a bonus to us for accurate guessing.

COMPANY POLICIES

SICK DAYS
We no longer accept a doctor's note as proof of sickness. If you are able to to the doctor, you are able to come to work.

PERSONAL DAYS
Each employee will receive 104 personal days a year. They're called Saturday and Sunday.

VACATION DAYS
All employees will take their vacation at the same time each year. Vacation days are as follows: January 1, Memorial Day, July 4th, Labor Day & December 25th.



Policies (cont.)

What they can do

- Define or clarify ambiguous terms or vague provisions in the documents
- Develop or add a process to accomplish something already allowed in the Documents
- Govern use of Common Elements and set forth expectations of conduct on Common Elements



Policies (cont.)

CCIOA Required 9 Policies:

- Adoption of Policies
- Alternative Dispute Resolution ("ADR")
- Conflict of Interest
- Conduct of Meetings
- Inspection of Records
- Collection
- Covenant Enforcement
- Investment of Reserves
- Reserve Study



Policies (cont.)

- If the procedure or policy you are utilizing is not reflected in the policy, then update the policy.
- **If what you are trying to do is not allowed through a rule or policy, then you will need to amend your Declaration or Bylaws first before you should update the policy.**



HAVING CONCLUDED THE EVENING WITHOUT SHOUTING OR VIOLENCE,
 KAREN CONSIDERS THIS WEEK'S BOARD MEETING A RESOUNDING SUCCESS.



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designed by Dawid Szymczyk



Drafting Techniques for Common Pitfalls

- Are you being consistent with state and federal laws (CCIOA, FHAA, CO Civil Rights Act)?
- Are you establishing enforcement standards that cannot be met?



Drafting Techniques for Common Pitfalls (cont.)

- Are you basing your amendments on outdated notions?
- Are you targeting a particular group?
- Are your provisions too specific? Not specific enough?



QUESTIONS & ANSWERS



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