



Homeowners' Associations

by Kristen Johnson

Homeowners' associations in Colorado are governed by the provisions set forth in the Colorado Common Interest Ownership Act (CCIOA).¹ The provisions of the act apply to common interest communities as defined in state law, and may include condominium developments, cooperatives, planned communities, phased communities, or a combination of these. This issue brief provides a summary of the major provisions of the act and recent legislation affecting common interest communities, including homeowners' associations.

Background

In 1991, the Colorado General Assembly adopted the CCIOA to govern the formation, management, and operation of common interest communities and homeowners' associations. The provisions of the CCIOA are modeled largely after those contained in the Uniform Common Interest Ownership Act, as promulgated by the National Conference of Commissioners on Uniform State Laws.

The CCIOA governs all homeowners' associations in Colorado created on or after July 1, 1992, and includes only a handful of provisions that apply to communities created prior to the act's effective date. Some exceptions to the CCIOA may apply to small planned communities, such as those with fewer than ten units, and new planned communities with

relatively small annual assessments set in their declarations. Some condominium developments may also be subject to the laws contained in the Colorado Condominium Ownership Act to the extent that they are not in conflict with the provisions of the CCIOA.

Major Provisions of the CCIOA

The CCIOA was created to establish a clear, comprehensive, and uniform framework for the creation and operation of common interest communities.

Creation of common interest communities. A common interest community may be created only by recording a declaration executed in the same manner as a deed and by conveying the real estate subject to that declaration to the association. The declaration must contain several elements including, but not limited to:

- the name of the common interest community and a statement that the community is a condominium, cooperative, or planned community;
- a legally sufficient description of the real estate included in the common interest community and a description of the boundaries of each unit;
- a description of common elements, and in planned communities, any real estate that is or must become common elements;

¹Section 38-33.3-101, *et seq.*, C.R.S.

- a description of any development rights and other special rights reserved by the declarant and a time limit within which each of those rights must be exercised; and
- occupancy, use, and sale restrictions imposed on each unit.

Public information. The act requires that each HOA provide all unit owners with a variety of information about the association, including the association's name and the name of the association's designated agent; contact information for the association and agent; the association's operating budget and annual financial statements; and the association's bylaws, articles, rules, and regulations.

Management responsibilities. The act requires that a unit owners' association is to be established as soon as the first unit of an association is purchased. The association may be organized as a nonprofit, for-profit, or a limited liability organization. The association is required to meet at least once per year. The powers of an association are outlined in the act and include the following:

- adopting and amending bylaws and budgets and hiring staff;
- maintaining and repairing the common elements and purchasing insurance for the common elements and against liability;
- defending the interests of the community;
- imposing fees and late payment penalties, and levying assessments for the upkeep of common elements; and
- approving or denying a unit owner's architectural or landscaping changes.

Dispute resolution. In the event of a dispute between a unit owner and the association, the CCIOA requires an association to develop and maintain alternative dispute resolution procedures. If a conflict arises, a unit owner and the association may enter into mediation to resolve the dispute, although mediation can be terminated at any time. However, if successful, the mediation agreement may be presented to the court

as a stipulation. If either party violates the mediation agreement, the other party may apply to the court for relief. If mediation is unsuccessful or the plaintiff is not interested in mediation, the primary avenue for recourse in a disagreement with an HOA is to file a civil suit through the court.

Agency regulation of HOAs. In 2010, the General Assembly adopted legislation creating the HOA Information and Resource Center in the Division of Real Estate, under the Department of Regulatory Agencies. The HOA Information and Resource Center serves as a clearinghouse for information concerning the rights and duties of unit owners, declarants, and unit owners' associations and may track inquiries and complaints concerning HOAs. In addition, HOAs must register with the director of the Division of Real Estate on an annual basis. The HOA Information and Resources Center maintains a website, which can be found at:

<http://www.dora.state.co.us/real-estate/hoa.htm>.

Recent Legislative History

Significant changes have been made to the CCIOA over the last several years in order to increase the rights of home owners and improve the relationship between owners and associations.

Most recently, House Bill 11-1124 was enacted by the General Assembly and signed into law. The bill addresses conflicts of interest for executive board members of a unit owners' association. It requires members to recuse themselves from voting on a contract, decision, or other action of the board when a conflict of interest arises. A conflict of interest exists if a board member or his or her relative would benefit financially from a contract, decision, or other action taken by the board. The member may still participate in the discussion but may not vote on the issue.