

## Colorado HOA report

The HOA Information & Resource Center is commonly asked whether a particular type of community – such as a property owners' association, a road association, or a voluntary association - is required to be registered with the Colorado Division of Real Estate. While the HOA Center is unable to offer legal advice, the following information is intended to provide guidance for board members, homeowners, and others in the common interest community industry as they seek to understand the state's registration mandate.

First, the abbreviation "HOA" means "homeowners' association". Many understand an HOA to be a community governed by a volunteer board of directors. The directors, or "board members", are charged with protecting and maintaining the common elements, collecting assessments, paying the bills, and ensuring the continuous and harmonious operation of the community.

The abbreviation "HOA" is not legally defined in the Colorado Common Interest Ownership Act ("CCIOA") – nor in any other state law or provision. Rather, CCIOA defines the term "Common Interest Community" ("CIC"). Let's take a closer look at this term and what it means with respect to registering an HOA in Colorado.

CCIOA defines a CIC as "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 38-33.3-103(8), C.R.S.

Is your community a CIC? It may be helpful to answer the following questions:

1. Is your community governed by an executed Declaration of Covenant's, Conditions, and Restrictions (or "CC&Rs") and filed with the county Clerk and Recorder's Office in the county where the community is located?
2. Is there real estate described in the CC&R's? For example, units, green spaces, clubhouses, roads, open space, lakes, swimming pools, sidewalks, tree lawns, rooftop patio, monument signs, hallways, elevators, lobbies, etc.
3. Are the owners of the units, or the "unit owners", responsible for paying for the upkeep and general maintenance of the real estate by way of regular dues, or "assessments", adopted and approved by a periodic budget of the community/association?

If the answer is “yes” to the above questions, there is a good chance your community is a common interest community, as defined by CCIOA.

What does this mean with respect to the Division of Real Estate’s HOA registration mandate found in the Colorado Revised Statutes (“C.R.S.”)? CCIOA is a distinct section of C.R.S., found specifically at sections 38-33.3-101, et seq.

The Division of Real Estate’s HOA registration mandate is found at section 38-33.3-401, C.R.S. Specifically, it states: “Every unit owners’ association shall register annually...”

Note the specific usage of the term “Unit owners association” in this section. An inquisitive reader may be inclined to question the meaning “unit owners association” as it relates to an HOA’s registration. The term “Unit owners association” is defined in CCIOA at 38-33.3-103(3), C.R.S. to mean: “a unit owners association organized under section 38-33.3-301, C.R.S.” As is typical in written law, the reader is directed to yet another section of law to fully grasp and understand its implication.

How then, is a unit owners association organized under 38-33.3-301, C.R.S.?

Section 38-33.3-301, C.R.S. provides that “A unit owners’ association shall be organized no later than the date the first unit in the common interest community is conveyed to a purchaser.” Stated another way, once the first unit that is described as “real estate” in the CC&Rs is conveyed - or sold - to a purchaser, the common interest community MUST organize a unit owners’ association no later than the date this sale occurred. If the common interest community did not organize a unit owners association by this date, then there is no legal unit owners’ association that must register as set forth by 38-33.3-401.

Nevertheless, most common interest communities form a unit owners association through this process set forth in the community’s “governing documents”. The “governing documents” are a set of legal documents that set the basis for the formation and governance of the common interest community. Examples of governing documents include but are not limited to the CC&R’s and Bylaws. These documents are usually initially prepared by real estate developers or their legal counsel and submitted to the state and local government where the common interest community is located in accordance with applicable laws and regulations.

Now that we have sought to establish a legal basis for the terms “Common Interest Communities” and “Unit Owners’ Associations”, board members should next try to frame their communities not in the context of “property owners association” or “road association” or “voluntary association”, but instead in the context of a Common Interest

Community or Unit Owners' Association because these are the terms that are defined and promulgated by CCIOA and state law.

Note

In conclusion, is your HOA required to register? It would largely depend on whether your HOA is a Common Interest Community or a Unit Owners' Association. It has long been the interpretation of the HOA Information and Resource Center that all Common Interest Communities and Unit Owners Associations are required to register with the Division of Real Estate.

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:

-Colorado HOA Information and Resource Center

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*On behalf of the HOA Center Information & Resource Center and the Division of Real Estate, thank you for reviewing this important HOA advisory.*

