

# LAW SUMMARY

*Office of Legislative Legal Services*



## ***APPLICATION OF THE COLORADO COMMON INTEREST OWNERSHIP ACT (CCIOA) IN HOA COMMUNITIES<sup>1</sup>***

The Colorado Common Interest Ownership Act (CCIOA) went into effect in 1992. Based substantially on the Uniform Common Interest Ownership Act, which was created by the National Conference of Commissioners on Uniform State Laws, CCIOA is codified in article 33.3 of title 38, Colorado Revised Statutes (C.R.S.).<sup>2</sup> Before the enactment of CCIOA, the legal framework for common interest communities was provided by the Condominium Ownership Act, article 33 of title 38. The Condominium Ownership Act remains in effect, but CCIOA is more likely to apply in most areas today.

Most of the important provisions in CCIOA apply to all common interest communities, regardless of when those communities were created. However, some provisions apply only to communities created on or after July 1, 1992 (post-1992 communities). Additionally, common interest communities created before July 1, 1992 (pre-1992 communities), are still subject to the older law. The following summary highlights significant differences between the newer and older laws.

### **Exceptions from CCIOA for Pre-existing Communities**

Many parts of CCIOA apply only to post-1992 communities and guide the formation of new communities. These provisions cover topics such as allocating voting power, rights and

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<sup>1</sup> This summary contains information commonly requested from the Office of Legislative Legal Services. It does not represent an official legal opinion of the General Assembly or the state of Colorado and does not bind the members of the General Assembly. It is intended to provide a general overview of Colorado law as of the date of its preparation. Any person needing legal advice should consult the person's own lawyer and should not rely on the information in this memorandum.

<sup>2</sup> The uniform law contained provisions creating a regulatory agency to supervise the operation of homeowners' associations, but Colorado did not adopt those provisions. Therefore, CCIOA's requirements can be enforced only through private legal action in the courts.

duties concerning "common elements" (that is, property owned in common by the homeowners' association rather than by individual homeowners), requirements for maps and building plans, alteration and subdivision of units<sup>3</sup>, and easement rights.<sup>4</sup> A pre-1992 community may "opt in" to full coverage under CCIOA.<sup>5</sup>

Except with regard to time shares, the provisions of the older Condominium Ownership Act apply only to communities created before July 1, 1992. These provisions include requirements for all declarations<sup>6</sup> created between July 1, 1983, and July 1, 1992. Requirements of declarations for communities created on or after July 1, 1992, include all the requirements for older communities plus additional statements and descriptions of development rights.

### **Meetings and Voting**

CCIOA specifies quorum requirements and other basic standards for meetings and voting. Beyond these basic standards, the governance of a common interest community is up to the unit owners as spelled out in the declaration. CCIOA also provides post-1992 communities with additional allowances and guidelines, including guidelines allowing lessees, rather than unit owners, to vote on specified matters if the declaration requires such votes.<sup>7</sup>

### **Executive Board**

Both pre- and post-1992 communities are subject to some of CCIOA's provisions pertaining to executive board members, powers, duties, reserve funds, and audits, as specified in section 38-33.3-303, C.R.S. Post-1992 communities are subject to all provisions of that section; but one significant provision pertaining to budgets does not apply to certain small or low-budget pre-1992 communities. That is the requirement that, within 90 days after the adoption of a proposed budget for the community, the HOA's executive board must mail or otherwise deliver a summary of the budget to all unit owners and set a date for a meeting of the unit owners, at which meeting the budget must be considered and can be vetoed by a majority vote of the unit owners.<sup>8</sup>

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<sup>3</sup> Parcels of individually owned property are called "units" under CCIOA, and a homeowners' association is called a "unit owners' association." For convenience, this summary refers to a unit owners' association as a "homeowners' association" or "HOA".

<sup>4</sup> See §§ 38-33.3-214 and 38-33.3-216, C.R.S.

<sup>5</sup> §38-33.3-118, C.R.S.

<sup>6</sup> The "declaration" is the document that must be filed in the county land records containing a legal description of the property included in the common interest community, plus a copy of the rules ("covenants") that every homeowner is required to follow after purchasing individual property in the community.

<sup>7</sup> See §§ 38-33.3-308 to 38-33.3-310, C.R.S.

<sup>8</sup> §§ 38-33.3-117 (1.8) and 38-33.3-119, C.R.S.

## Insurance and Financial Matters

CCIOA requires HOAs to carry property insurance on the common elements of a post-1992 community.<sup>9</sup> In addition, the HOA of a post-1992 community must maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of common elements.<sup>10</sup>

Finally, CCIOA requires that, for post-1992 communities:

- Surplus funds remaining after payment of common expenses and after any prepayment of or provision for reserves must be paid to the unit owners or credited to them to reduce future common-expense assessments;<sup>11</sup>
- Common expenses associated with the maintenance, repair, or replacement of a "limited common element" (i.e., a common element that benefits some but not all of the units) must be assessed only against the unit or units benefitting and not against all units;<sup>12</sup> and
- Unit owners cannot exempt themselves from paying assessments by waiving the use or enjoyment of any of the common elements or by abandoning a unit against which assessments are made.<sup>13</sup>

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<sup>9</sup> §38-33.3-313, C.R.S.

<sup>10</sup> *Id.*

<sup>11</sup> §38-33.3-314, C.R.S.

<sup>12</sup> §38-33.3-315 (3), C.R.S.

<sup>13</sup> §38-33.3-315 (6), C.R.S.