

# LAW SUMMARY

*Office of Legislative Legal Services*



## ***Regulation of Homeowners' Property Rights Within Common Interest Communities (HOAs)<sup>1</sup>***

The Colorado Common Interest Ownership Act (CCIOA) was established in 1992 to form a clear, comprehensive, and uniform framework for the creation and operation of common interest communities. Within CCIOA, homeowners' associations (HOAs) are given the authority to manage the commonly owned property and regulate the use and maintenance of individually owned homes within the community ("units"). However, HOAs are limited in what they can require of a homeowner and what they can prohibit a homeowner from doing or owning. This summary discusses those limitations.

While an HOA may regulate the location, size, and general appearance of flags and political signs, it cannot prohibit:

- The display of the American flag on a unit owner's property, in a window of the unit, or on a balcony adjoining the unit if the American flag is displayed in a manner consistent with the federal flag code;
- The display of a service flag bearing a star denoting the service of the owner or occupant of the unit, or of a member of the owner's or occupant's immediate family, in the active or reserve military service of the United States during a time of war or armed conflict, on the inside of a window or door of the unit;
- The display of a religious item or symbol (such as a mezuzah, cross, or crescent) on the entry door or entry door frame of a unit; or
- The display of a political sign by the owner or occupant of a unit on property within the boundaries of the unit or in a window of the unit during an election season, *i.e.*, from 45 days before election day to 7 days after election day.<sup>2</sup>

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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 his or her own lawyer and should not rely on the information in this memorandum.

The primary sources for the information contained in this memorandum are: Sections 38-33.3-106.5, 38-33.3-106.7, and 38-33.3-106.8, Colorado Revised Statutes (C.R.S.).

<sup>2</sup> § 38-33.3-106.5 (1)(a) to (1)(d), C.R.S.

Similarly, an HOA generally can control the parking of vehicles in the community but there are specific exceptions when it comes to vehicles that are used by persons who are employed as first responders and are required to have immediate access to those vehicles when at home.<sup>3</sup>

Because of the increasing danger of wildfires in Colorado, the creation of "defensible space" and other fire mitigation measures are an area in which the HOA's authority has recently been curtailed. For example, a homeowner who wishes to replace a cedar-shake roof with less flammable roofing materials must be permitted to do so, regardless of whether the community's architectural approval standards require cedar shakes.<sup>4</sup>

A homeowner must be allowed to remove trees, shrubs, or other vegetation to create defensible space around a dwelling for fire mitigation purposes, although the HOA may require the homeowner to give notice before commencing work. The removal itself must comply with a written defensible space plan created for the property by the Colorado state forest service, an individual or company certified by a local governmental entity to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the unit is located and must be no more extensive than necessary to comply with the plan.<sup>5</sup>

An HOA also cannot prohibit:

- Reasonable modifications to a unit or to common elements as necessary to afford a person with disabilities full use and enjoyment of the unit in accordance with the federal "Fair Housing Act of 1968", 42 U.S.C. sec. 3604 (f)(3)(A);<sup>6</sup>
- The operation of a licensed family child care home;<sup>7</sup>
- The right of a unit owner, public or private, to restrict or specify by deed, covenant, or other document: the permissible sale price, rental rate, or lease rate of the unit; or occupancy or other requirements designed to promote affordable or workforce housing;<sup>8</sup>
- The use of xeriscape or drought-tolerant vegetative landscapes to provide ground covering to property owned by the unit owner. HOAs may adopt and enforce design or aesthetic guidelines or rules that require drought-tolerant vegetative land-

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<sup>3</sup> § 38-33.3-106.5 (1)(d)(II), C.R.S.

<sup>4</sup> § 38-33.3-106.5 (2), C.R.S.

<sup>5</sup> § 38-33.3-106.5 (1)(e), C.R.S.

<sup>6</sup> § 38-33.3-106.5 (1)(g), C.R.S.

<sup>7</sup> § 38-33.3-106.5 (1)(k), C.R.S.

<sup>8</sup> § 38-33.3-106.5 (1)(h), C.R.S.

scapes or regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on the unit owner's property or property for which the unit owner is responsible.<sup>9</sup>

- Rain barrels;<sup>10</sup> or
- Renewable energy generation devices such as solar panels or residential-scale windmills.<sup>11</sup>

To encourage energy conservation, an HOA must allow (subject to reasonable restrictions) energy efficiency measures such as an awning, shutter, trellis, ramada, or other shade structure that is marketed for the purpose of reducing energy consumption; a garage or attic fan and any associated vents or louvers; an evaporative cooler; an energy-efficient outdoor lighting device; or a retractable clothesline.<sup>12</sup>

Finally, an HOA cannot unreasonably restrict a homeowner's installation, at the homeowner's expense and for his or her own use, a standard electric vehicle charging system on or in a unit or charge the homeowner any fee for doing so, other than passing along the cost of any increased electricity usage for which the HOA is billed or assessing a reasonable access fee to offset the HOA's costs.<sup>13</sup>

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<sup>9</sup> §38-33.3-106.5 (1)(i), C.R.S.

<sup>10</sup> §38-33.3-106.5 (1)(j), C.R.S.

<sup>11</sup> § 38-33.3-106.5 (1.5), C.R.S.

<sup>12</sup> § 38-33.3-106.7, C.R.S.

<sup>13</sup> § 38-33.3-106.8, C.R.S.