

I must strongly ask that the committee support this bill and the work of Rep. Titone as imperfect as it might seem to many.

Briefly a few points that I have experienced from my HOA in response to their displeasure with me and a purchase of parking rights that all our documents, as gone over by a competent lawyer, allowed

1. I was elected to the board and soon after the board, which had an attorney on its membership, told me to get out. I told them that only the membership that voted me on to represent them could do that and I was told they did not care. Soon after the HOA attorney sent a letter saying that what they did violated HOA law and then he went on to tell them how to make it look different

2. Then I was sent a letter by that attorney saying in part and I quote: "Your purchase of the parking space appears to be in violation of our covenants and even if permitted was done incorrectly" Though what that meant was never expressed. It then goes on to say I violated August 2013 revised Rules and Regs yet I followed to the letter Sept 2013 revised rules and regs.

3. At the time I spoke to speaker Crisanta Duran about this at Senior Day at the Capitol. She asked me to email her a copy of the email from the attorney. . I never heard from Speaker Duran but the secretary of our board who is now president and works at the Capitol managed to get a copy of this private email and published it to the entire HOA community to discredit me.. *I DO NOT believe speaker duran*

4.. My attempts to ask the board in monthly meetings to explain themselves was met with a cease and desist letter from the previous mentioned attorney.

5. A resident who was elected to the board one day refused to get on the elevator with me as she said she was told never to be alone with me as I was capable of murdering her. She would not say who told her that but shunning has been an on going experience

to close I would like to read a short quote from The Independant American Communities website

The HOA's goal is to wear down the "malcontent" financially and emotionally, so that they will give up the fight and move on. The goal is to set an example for other owners and residents, so that they do not dare to question status quo, for fear that they will be the next target of the Association.

Thus I ask in the name of all HOA owners that the Committee support this bill

Thank you



HindmanSanchez

December 13, 2016

Via Email

Denver Office

David A. Firmin

Direct 303.991.2028

dfirmin@hindmansanchez.com

Board of Directors
888 Condominium Association
c/o Community Association Prof.
910 16th Street, Suite 1010
Denver, CO 80202

*Re: 888 Condominium Association: Removal of Board Members
Our File No. 9837.0001*

Dear Members of the Board:

Per your request, we have reviewed whether Mr. Peter Wein was properly removed from the Board of Directors. While Mr. Wein was not necessarily removed from the Board in an appropriate manner, the removal was done in good faith. The Board promptly filled his seat, and all of the Board's actions since then have been proper and performed by a duly constituted board.

In the majority of the Board's opinion, Mr. Wein was not acting in a manner conducive to a functional Board. During a Board meeting during which the Board was bogged down in its decision making, a motion was made, seconded, and unanimously voted upon to remove Mr. Wein from the Board. The support for this effort was under the Bylaws of 888 Condominiums, Article V, Section 3, which states, "Upon an affirmative vote of a majority of the members of the Board of Directors, any Officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board." Unfortunately, while the Board may remove an officer, the Board was unaware that it could not remove a Director. To remove a Director, the Board must follow Article IV, Section 7 which provides, "at a regular or special meeting duly called, any one (1) or more of the Directors may be removed with or without cause by a majority of the Owners ..."

The Board, thinking that "Officers" and "Directors" are one and the same, believed it could remove Mr. Wein from his position on the Board. Even though this was done in error, given the amount of time that has passed and the lack of objection from both Mr. Wein and the Association, it can be inferred that Mr. Wein accepted the removal. Additionally, the law generally gives preference to a fully constituted board and is designed to allow both the Association and vendors certainty in their operations. Therefore, because there was no prompt complaint concerning removal, and given the length of time since the removal, equity would necessarily support the continued operation of the board as it is.

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Board of Directors
888 Condominium Association
December 13, 2016

Thus, while we understand the confusion, the votes to remove Mr. Wein were accepted. The Board cannot simply reinstate Mr. Wein because doing so would only cause uncertainty in the Association's operations.

Sincerely,

A handwritten signature in black ink, appearing to read 'David A. Firmin', with a long, sweeping horizontal stroke extending to the right.

David A. Firmin
HindmanSanchez P.C.

DAF/lvm
6310743



August 9, 2019

Peter Wien
888 Logan Street, Unit 4H
Denver, CO 80203
pwien@juno.com

Denver Office
David A. Firmin
Direct 303.991.2028
dfirmin@altitude.law

Re: *888 Condominium Association / Void Parking Space Transfer*
Our File No. 9837.0001

Dear Mr. Wien:

As you know, Altitude Community Law P.C. is legal counsel to 888 Condominium Association (the "Association"). The Board of Directors has requested we contact you concerning your purchase of a parking space (the "Parking Space").

We understand you purchased the Parking Space via quitclaim deed on, or about, May 1, 2017. As you are aware, Article IV, Section 4.2 of the Association's Condominium Declaration allocated limited common element parking spaces to specific units. Your purchase of the Parking Space appears to be in violation of the Declaration and, even if permitted by the Declaration, was done incorrectly. Parking spaces are limited common elements which cannot be conveyed by one owner to another.

Additionally, the Rules & Regulations of the 888 Condominium Association (Revised August 2013) require in its Rule 23.0, Paragraph 1, the Association be notified prior to any sale or transfer of a parking space. It appears appropriate notice was not given to the Association regarding the sale of the Parking Space. We understand you may have entered into a lease agreement for your use of this Parking Space given the issues with the attempted purchase of the same.

While the Board of Directors at this time has no desire to unwind this transaction or prohibit your use of the Space, it does however, require the use of the Space be limited to the period of time the owner of the unit, to which the Space was appurtenant, owns the unit. When the owner sells his unit, the lease must terminate and the Space be made available to the new owner of the unit. To that end, the Board requests you provide a copy of the lease which allows you to occupy the Parking Space, a duly executed quit claim deed for the Space back to the former owner, and that you submit all documentation to the Board for review. Once this is complete, the Association will be better able to track to which units spaces are allocated. Please feel free to contact the Board with any questions you may have regarding this process.

Sincerely,

A handwritten signature in black ink, appearing to be "DAF", written over a horizontal line.

David A. Firmin, Esq.
Altitude Community Law P.C.
DAF/amc
cc. Board of Directors

06801174.DOCX:2

ChrisS@capmanagement.com

Account Info

Sign Out

Home

Actions Apply

Inbox (32671)

Drafts (10)

Sent

Spam (288)

Trash

My Folders

Archive

Attorney Letter re: Mr. Wein

Sunday, April 9, 2017 10:43 AM

From: "888 Condominium Association" <secretary@888condos.org>



Speaker Duran

*released 3hrs 45min
before election*

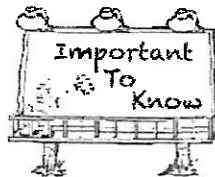
*The warning makes it
sound like your office
contacted the Board
when in truth
our secretary did it*



Several of you have inquired as to the status of Peter Wein's position within the Board. After Mr. Wein was removed last year the Board asked the HOA attorney, David Firmin, to weigh in on the matter. Because of confidential attorney/client privileges Board members were only able to confirm that Mr. Wein was no longer on the board, and did not disclose the response Mr. Firmin provided to the Board. It has come to the board's attention that Mr. Wein himself has made the letter public by sharing it with a public servant, specifically, Speaker of the Colorado House of Representatives, Crisanta Duran. In an effort to remain transparent the Board inquired with David Firmin about disclosing the letter to residents. Mr. Firmin confirmed that since Mr. Wein himself has made the letter public the Board was now free to disclose it to homeowners.

The letter from David Firmin regarding Peter's removal from the Board can be found [redacted]. Please direct all questions to Chris Stange at ChrisS@capmanagement.com.

COMMUNITY



From: REBECCA HAUSMANN (rlhausmann1@msn.com)
To: guydepierre@ymail.com;
Date: Monday, April 17, 2017 1:36 PM

Peter,

When the board talked about sending David Firmin's legal opinion about your removal from the board out to the homeowners in order to be completely transparent about your removal, we contacted David Firmin to find out if it was OK for us to release the legal opinion to the homeowners.

When we asked him about releasing the legal opinion, he was concerned about your privacy. However, earlier I heard from a friend at the capitol that you had sent Rep. Duran an e-mail that included David Firmin's legal opinion to the board. When I told him I had heard you'd sent a copy to Rep. Duran, he replied that since you had already shared it, it was fine for us to do so.

I'm sorry that the e-mail sent to the homeowners provided that information. I didn't think it was necessary to tell everyone whom you had shared it with, but I didn't see the e-mail before it went out. I understand that you are upset about that information being shared and I apologize.

Rebecca

CAI: The requirement that every board member complete an online basic knowledge course....

Response: All Board members should be required to complete an online basic knowledge course to certify an understanding of the HOA documents to the best of their ability. If an issue arises that they are not sure of, they are going to seek legal advice anyway. My HOA picks and chooses what items they want to enforce and against whom, regardless of CCIOA requirements, especially to producing contracts that residents are legally entitled to have. And, residents are not permitted to voice their views on items before the HOA Board votes on them. The Board votes prior to the meetings and then just ratifies their votes at the meetings.

CAI: Mandates that all community associations create and maintain websites that provide owners online access to documents and records.

Response: It is doubtful that with today's technology that there would be many associations that don't already have a website to communicate with their homeowners. If we didn't have a website, there would be no way to even know what documents, policies, rules, etc., that the HOA Board approved.

CAI: Prohibits secret and written ballots, which helped communities survive the pandemic and found successful at engaging owners when gathering for meetings was out of the question. Eliminates the right of homeowners to vote for their preferred candidates secretly, encouraging behind-the-scenes bullying, chilling owner participation, and discouraging volunteers from running for the Board. Limits meeting attendance by proxy, a tactic that has proven effective especially during the pandemic.

Response: There are pros and cons to secret balloting. HOA Board members have been observed going to residents to collect their secret ballots, thus influencing the residents on how to vote. And, proxies should not designate a Board member to vote for them. It should have to be another resident that is not on the HOA Board; again, Board members have solicited proxies giving them the authority to vote for a resident. If proxies were prohibited to ensure a quorum at a meeting, it would force residents to attend the meeting, which is a good thing, as too many are complacent and have no idea what the HOA Board is proposing, approving, etc.

I am definitely in favor of filling a vacancy in the HOA Board via secret ballot, unless only one resident is running for the position, and filling that vacancy if it occurs prior to sixty days before the end of a member's term.

CAI: Proposes to make proprietary private corporate economic information publicly available by posting fees on a website created and hosted by the state. The lowest fee isn't always the best service.

Response: If this is referring to the transfer fees, it definitely needs to be posted. These fees are outrageous and need to be put to an end. All of the HOA's documents should be available on the association's website or a state website for a prospective owner to read prior to closing, and a statement certifying the status of an account is easily provided by the management company with no extra research involved as this info is updated on a monthly basis. It is easy for a management company to email the documents to a prospective buyer; there is no need to charge for copies unless the prospective buyer requests them. We have had many homes that have sold in the past year or so, and the transfer fees are just money that is padding the management company's pockets.

HOA Information Officer: This is a definite need to help residents resolve disputes with HOA Boards without having to go to mediation or hire legal representation. If a resident chooses the legal route, the resident pays for their lawyer, and the HOA Board is then represented by the HOA's legal firm requiring the resident to pay for both.

MY STORY: Per CCIOA, residents are permitted to have copies of all contracts. I submitted a "Notice to Inspect Association Records," specifically asking to have a copy of the management contract. The management company refused to provide me with a copy. I filed a complaint against the management company with DORA, who required that the management produce it. I received a copy of it in the mail. Then, the management company charged our HOA for their legal fees, even though they were at fault. However, the HOA Board paid the fees and publicly reprimanded me at a Board meeting as being responsible for this expense.

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 13-0477.01 Jennifer Berman x3286

HOUSE BILL 13-1134

HOUSE SPONSORSHIP

Ryden,

SENATE SPONSORSHIP

Carroll,

House Committees

Business, Labor, Economic, & Workforce Development

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING UNIT OWNERS' ASSOCIATIONS UNDER THE "COLORADO**
102 **COMMON INTEREST OWNERSHIP ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The HOA information and resource center (center) was created in 2010 to track inquiries and complaints related to unit owners' associations (a/k/a homeowners' associations or HOAs) and report them to the director of the division of real estate (director). The center also serves as a clearinghouse for information concerning the rights and duties of unit

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

owners and associations. The center does not have regulatory or investigative power.

Section 1 of the bill empowers the center to perform certain regulatory and investigative actions, including:

- Reporting suspected violations of the "Colorado Common Interest Ownership Act" (act) and rules promulgated under the act;
- Assisting with resolving disputes by offering to mediate them or referring them to alternate dispute resolution services; and
- If sufficiently petitioned by enough members of an association, appointing an election monitor and conducting the election of the association's directors.

Section 2 of the bill directs the director to calculate the annual fee paid by associations to support the center's operation on a per-unit basis and provides a formula for the director to use to calculate each association's fee.

Section 3 of the bill amends the annual registration provisions by:

- Adding information that a unit owners' association is required to provide along with its annual registration, including the name of the association, contact information for the association, and the number of units in the association;
- Clarifying that if an association fails to register, then its right to pursue legal remedies will be suspended, without prejudice, and its rights will be restored upon validly registering;
- Clarifying the means by which an HOA may prove that it has validly registered;
- Specifying that a registration is not invalid merely because it contains technical or typographical errors; and
- Applying the registration requirements to common interest communities that were established before enactment of the act.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 12-61-406.5

3 as follows:

4 **12-61-406.5. HOA information and resource center - creation**

5 **- duties - rules - cash fund - repeal.** (1) There is hereby created, within

1 the division of real estate, the HOA information and resource center, the
2 head of which ~~shall be~~ is the HOA information officer. The EXECUTIVE
3 DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES SHALL
4 APPOINT THE HOA information officer ~~shall be appointed by the~~
5 ~~executive director of the department of regulatory agencies~~ pursuant to
6 section 13 of article XII of the state constitution.

7 (2) The HOA information officer shall be familiar with the
8 "Colorado Common Interest Ownership Act", article 33.3 of title 38,
9 C.R.S., also referred to in this section as the "act". ~~No~~ THE EXECUTIVE
10 DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES SHALL NOT
11 APPOINT AS AN HOA INFORMATION OFFICER A person who is or, within the
12 immediately preceding ten years, has been licensed by or registered with
13 the division of real estate or who owns stocks, bonds, or any pecuniary
14 interest in a corporation subject in whole or in part to regulation by the
15 division of real estate. ~~shall be appointed as HOA information officer.~~ In
16 addition, in conducting the search for an appointee, the executive director
17 of the division of real estate shall place a high premium on candidates
18 who are balanced, independent, unbiased, and without any current
19 financial ties to an HOA board or board member or to ~~any~~ A person or
20 entity that provides HOA management services. After being appointed,
21 the HOA information officer shall refrain from engaging in any conduct
22 or relationship that would create a conflict of interest or the appearance
23 of a conflict of interest.

24 (3) (a) The HOA information officer shall act as a clearing house
25 for information concerning the basic rights and duties of unit owners,
26 declarants, and unit owners' associations under the act BY:

27 (I) COMPILING A DATABASE ABOUT REGISTERED ASSOCIATIONS,

1 INCLUDING THE NAME, ADDRESS, AND TELEPHONE NUMBER OF EACH
2 ASSOCIATION;

3 (II) COORDINATING AND ASSISTING IN THE PREPARATION OF
4 EDUCATIONAL AND REFERENCE MATERIALS, INCLUDING MATERIALS TO
5 ASSIST UNIT OWNERS, BOARDS OF DIRECTORS, BOARD MEMBERS, AND
6 ASSOCIATION MANAGERS WITH UNDERSTANDING THEIR RIGHTS AND
7 RESPONSIBILITIES;

8 (III) MONITORING CHANGES IN FEDERAL AND STATE LAWS
9 RELATING TO COMMON INTEREST COMMUNITIES; AND

10 (IV) PROVIDING INFORMATION, INCLUDING A "FREQUENTLY ASKED
11 QUESTIONS" RESOURCE, ON THE DIVISION OF REAL ESTATE'S WEB SITE.

12 (b) The HOA information officer MAY:

13 (I) ~~May~~ Employ one or more assistants ~~up to a maximum of 1.0~~
14 ~~FTE~~, as may be necessary to carry out his or her duties; ~~and~~

15 (II) REQUEST CERTAIN RECORDS FROM ASSOCIATIONS;

16 (III) RECOMMEND RULE CHANGES CONCERNING THE FILING,
17 INVESTIGATION, AND RESOLUTION OF COMPLAINTS;

18 (IV) REFER DISPUTES ARISING BETWEEN OR AMONG THE DIVISION,
19 UNIT OWNERS, BOARDS OF DIRECTORS, BOARD MEMBERS, AND
20 ASSOCIATION MANAGERS TO ALTERNATIVE DISPUTE RESOLUTION
21 SERVICES; AND

22 (V) IF NO FORMAL ACTION HAS BEEN TAKEN WITH REGARD TO A
23 DISPUTE THAT HAS ARISEN BETWEEN OR AMONG UNIT OWNERS, BOARDS OF
24 DIRECTORS, BOARD MEMBERS, ASSOCIATION MANAGERS, OR OTHER
25 AFFECTED PARTIES, ASSIST WITH RESOLVING THE DISPUTE BY OFFERING TO
26 MEDIATE. IN MEDIATING A DISPUTE, THE HOA INFORMATION OFFICER
27 SHALL ACT AS A NEUTRAL RESOURCE FOR ALL PARTIES INVOLVED AND

1 SHALL NOT PURPORT TO GIVE LEGAL ADVICE TO A PARTY.

2 (c) THE HOA INFORMATION OFFICER SHALL:

3 (I) ~~Shall~~ Track inquiries and complaints and report annually to the
4 director of the division of real estate regarding the number and types of
5 inquiries and complaints received;

6 (II) REPORT PROMPTLY TO THE DIRECTOR OF THE DIVISION OF REAL
7 ESTATE REGARDING SUSPECTED VIOLATIONS OF THE ACT OR RULES
8 PROMULGATED UNDER THE ACT;

9 (III) ACT AS A LIAISON BETWEEN THE DIVISION, UNIT OWNERS,
10 BOARDS OF DIRECTORS, BOARD MEMBERS, AND ASSOCIATION MANAGERS;

11 (IV) ASSIST UNIT OWNERS, BOARDS OF DIRECTORS, BOARD
12 MEMBERS, AND ASSOCIATION MANAGERS WITH UTILIZING THE
13 PROCEDURES AND PROCESSES AVAILABLE TO THEM TO RESOLVE CONFLICTS
14 WITHIN THE ASSOCIATION, INCLUDING PROVIDING EXPLANATIONS OF LAWS
15 AND REGULATIONS GOVERNING COMMON INTEREST COMMUNITIES AND
16 BOARD INTERPRETATIONS OF THE LAWS AND REGULATIONS. IN PROVIDING
17 ASSISTANCE OR EXPLANATIONS, THE HOA INFORMATION OFFICER SHALL
18 ACT AS A NEUTRAL RESOURCE AND SHALL NOT PURPORT TO GIVE LEGAL
19 ADVICE.

20 (V) WITH REGARD TO HOA ELECTIONS:

21 (A) MONITOR AND REVIEW ASSOCIATIONS' PROCEDURES AND ANY
22 ELECTION-RELATED DISPUTES THAT ARISE;

23 (B) RECOMMEND ENFORCEMENT ACTION WHEN THE HOA
24 INFORMATION OFFICER HAS REASONABLE CAUSE TO BELIEVE THAT
25 ELECTION MISCONDUCT HAS OCCURRED; AND

26 (C) APPOINT AN ELECTION MONITOR AND CONDUCT THE ELECTION
27 OF DIRECTORS OF AN ASSOCIATION IF FIFTEEN PERCENT OF THE TOTAL

1 VOTING INTERESTS IN THE ASSOCIATION, OR SIX UNIT OWNERS, WHICHEVER
2 IS GREATER, PETITION THE HOA INFORMATION OFFICER TO DO SO.

3 (4) The operating expenses of the HOA information and resource
4 center ~~shall be~~ ARE paid from the HOA information and resource center
5 cash fund, which fund is hereby created in the state treasury. The fund
6 ~~shall consist~~ CONSISTS of annual registration fees paid by unit owners'
7 associations and collected by the division of real estate pursuant to
8 section 38-33.3-401, C.R.S. Interest earned on moneys in the fund ~~shall~~
9 remain in the fund, and any unexpended and unencumbered moneys in the
10 fund at the end of any fiscal year ~~shall~~ DO not revert to the general fund
11 or any other fund. Payments from the fund ~~shall be~~ ARE subject to annual
12 appropriation.

13 (5) The director of the division of real estate may adopt rules as
14 necessary to implement this section and section 38-33.3-401, C.R.S. This
15 subsection (5) ~~shall~~ DOES not ~~be construed to~~ confer additional
16 rule-making authority upon the director for any other purpose.

17 (6) This section is repealed, effective September 1, 2020. Prior to
18 such repeal, the HOA information and resource center and the HOA
19 information officer's powers and duties under this section shall be
20 reviewed in accordance with section 24-34-104, C.R.S.

21 **SECTION 2.** In Colorado Revised Statutes, 12-61-111.5, **amend**
22 (2) (a) (II); and **add** (2) (a) (III) and (2) (a) (IV) as follows:

23 **12-61-111.5. Fee adjustments.** (2) (a) (II) The costs of the HOA
24 information and resource center, created in section 12-61-406.5, ~~shall be~~
25 ARE paid from the HOA information and resource center cash fund
26 created in section 12-61-406.5. The division of real estate shall estimate
27 the direct and indirect costs of operating the HOA information and

1 resource center. ~~and~~ THE DIRECTOR OF THE DIVISION OF REAL ESTATE shall
2 establish the amount of ~~the~~ AN ASSOCIATION'S annual registration fee, to
3 be collected under section 38-33.3-401, C.R.S., ~~The amount of the~~
4 ~~registration~~ BY DETERMINING A PER-UNIT ANNUAL REGISTRATION fee AND
5 MULTIPLYING IT BY THE NUMBER OF UNITS IN THE ASSOCIATION. THE
6 DIRECTOR shall ~~be~~ SET THE PER-UNIT ANNUAL REGISTRATION FEE AT AN
7 AMOUNT THAT, WHEN MULTIPLIED BY THE NUMBER OF UNITS IN
8 ASSOCIATIONS REQUIRED TO PAY THE FEE UNDER SECTION 38-33.3-401,
9 C.R.S., IS sufficient to recover such costs. ~~subject to a maximum limit of~~
10 ~~fifty dollars and~~ THE PER-UNIT ANNUAL REGISTRATION FEE IS subject to
11 adjustment to reflect the actual direct and indirect costs of operating the
12 HOA information and resource center pursuant to the general directive to
13 adjust fees to avoid exceeding the statutory limit on uncommitted reserves
14 in administrative agency cash funds, as set forth in section 24-75-401 (3),
15 C.R.S.

16 (III) TO DETERMINE THE PER-UNIT ANNUAL REGISTRATION FEE
17 UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), THE DIVISION OF REAL
18 ESTATE SHALL:

19 (A) DETERMINE THE TOTAL NUMBER OF UNITS IN ALL
20 ASSOCIATIONS THAT ARE NOT EXEMPT FROM PAYING THE FEE UNDER
21 SECTION 38-33.3-401 (2) (b), C.R.S., BASED ON THE INFORMATION
22 PROVIDED BY ASSOCIATIONS UNDER SECTION 38-33.3-401 (2) (a) (IV),
23 C.R.S.; AND

24 (B) DIVIDE THE TOTAL AMOUNT OF THE ESTIMATED DIRECT AND
25 INDIRECT COSTS OF OPERATING THE HOA INFORMATION AND RESOURCE
26 CENTER BY THE NUMBER CALCULATED IN SUB-SUBPARAGRAPH (A) OF THIS
27 SUBPARAGRAPH (III).

1 (IV) THE DIVISION OF REAL ESTATE SHALL CALCULATE AN
2 ASSOCIATION'S ANNUAL REGISTRATION FEE BY MULTIPLYING THE PER-UNIT
3 ANNUAL REGISTRATION FEE, AS DETERMINED UNDER SUBPARAGRAPH (III)
4 OF THIS PARAGRAPH (a), BY THE NUMBER OF UNITS IN THE ASSOCIATION.

5 **SECTION 3.** In Colorado Revised Statutes, **amend** 38-33.3-401
6 as follows:

7 **38-33.3-401. Registration - annual fees.** (1) Every unit owners'
8 association ~~organized under section 38-33.3-301~~ shall register annually
9 with the director of the division of real estate, in the form and manner
10 specified by the director.

11 (2) (a) Except as otherwise provided in paragraph (b) of this
12 subsection (2), the UNIT OWNERS' ASSOCIATION SHALL SUBMIT WITH ITS
13 annual registration ~~shall be accompanied by~~ a fee in the amount set by the
14 director in accordance with section 12-61-111.5, C.R.S., and shall include
15 the FOLLOWING information, ~~required to be disclosed under section~~
16 ~~38-33.3-209.4 (1). The information shall be updated within ninety days~~
17 ~~of~~ AFTER any change: ~~in accordance with section 38-33.3-209.4 (1).~~

18 (I) THE NAME OF THE ASSOCIATION, AS SHOWN IN THE COLORADO
19 SECRETARY OF STATE'S RECORDS;

20 (II) THE NAME OF THE ASSOCIATION'S MANAGEMENT COMPANY,
21 MANAGING AGENT, OR DESIGNATED AGENT, WHICH MAY BE THE
22 ASSOCIATION'S REGISTERED AGENT, AS SHOWN IN THE COLORADO
23 SECRETARY OF STATE'S RECORDS, OR ANY OTHER AGENT THAT THE
24 EXECUTIVE BOARD HAS DESIGNATED FOR PURPOSES OF REGISTRATION
25 UNDER THIS SECTION;

26 (III) A VALID ADDRESS AND TELEPHONE NUMBER FOR THE
27 ASSOCIATION OR ITS MANAGEMENT COMPANY, MANAGING AGENT, OR

1 DESIGNATED AGENT; AND

2 (IV) THE NUMBER OF UNITS IN THE ASSOCIATION.

3 (b) A unit owners' association ~~shall be~~ IS exempt from the fee, but
4 not the registration requirement, if the association:

5 (I) Has annual revenues of five thousand dollars or less; or

6 (II) Is not authorized to make assessments and does not have ~~any~~
7 revenue.

8 (3) A registration ~~shall be~~ IS valid for one year. THE RIGHT OF an
9 association that fails to register, or whose annual registration has expired,
10 ~~is ineligible~~ to impose or enforce a lien for assessments under section
11 38-33.3-316 or to pursue ~~any~~ AN action or employ ~~any~~ AN enforcement
12 mechanism otherwise available to it under section 38-33.3-123 IS
13 SUSPENDED until ~~it~~ THE ASSOCIATION is ~~again~~ validly registered pursuant
14 to this section. A lien for assessments previously filed during a period in
15 which the association was validly registered or before registration was
16 required pursuant to this section ~~shall~~ IS not ~~be~~ extinguished by a lapse in
17 the association's registration, but ~~any~~ A pending enforcement ~~proceedings~~
18 PROCEEDING related to ~~such~~ THE lien ~~shall be~~ IS suspended, and ~~any~~ AN
19 applicable time ~~limits~~ LIMIT IS tolled, until the association is ~~again~~ validly
20 registered pursuant to this section. AN ASSOCIATION'S REGISTRATION IN
21 COMPLIANCE WITH THIS SECTION REVIVES A PREVIOUSLY SUSPENDED
22 RIGHT WITHOUT PENALTY TO THE ASSOCIATION.

23 (4) (a) A REGISTRATION IS VALID UPON THE DIVISION OF REAL
24 ESTATE'S ACCEPTANCE OF THE INFORMATION REQUIRED BY PARAGRAPH (a)
25 OF SUBSECTION (2) OF THIS SECTION AND THE PAYMENT OF APPLICABLE
26 FEES.

27 (b) AN ASSOCIATION'S REGISTRATION NUMBER, AND AN

1 ELECTRONIC OR PAPER CONFIRMATION ISSUED BY THE DIVISION OF REAL
2 ESTATE, ARE PRIMA FACIE EVIDENCE OF VALID REGISTRATION.

3 (c) ~~Administratively~~ THE DIRECTOR OF THE DIVISION OF REAL
4 ESTATE'S final determinations ~~by the director of the division of real estate~~
5 concerning the validity or timeliness of registrations under this section are
6 subject to judicial review pursuant to section 24-4-106 (11), C.R.S.;
7 EXCEPT THAT THE COURT SHALL NOT FIND A REGISTRATION INVALID BASED
8 SOLELY ON TECHNICAL OR TYPOGRAPHICAL ERRORS.

9 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-117, **amend**
10 (1.5) introductory portion, (1.5) (l), and (1.5) (m); and **add** (1.5) (n) as
11 follows:

12 **38-33.3-117. Applicability to preexisting common interest**
13 **communities.** (1.5) Except as provided in section 38-33.3-119, the
14 following sections ~~shall~~ apply to all common interest communities created
15 within this state before July 1, 1992, with respect to events and
16 circumstances occurring on or after January 1, 2006:

17 (l) 38-33.3-315 (7); ~~and~~

18 (m) 38-33.3-317; AND

19 (n) 38-33.3-401.

20 **SECTION 5. Act subject to petition - effective date.** (1) Except
21 as provided in subsection (2) of this section, this act takes effect at 12:01
22 a.m. on the day following the expiration of the ninety-day period after
23 final adjournment of the general assembly (August 7, 2013, if
24 adjournment sine die is on May 8, 2013); except that, if a referendum
25 petition is filed pursuant to section 1 (3) of article V of the state
26 constitution against this act or an item, section, or part of this act within
27 such period, then the act, item, section, or part will not take effect unless

1 approved by the people at the general election to be held in November
2 2014 and, in such case, will take effect on the date of the official
3 declaration of the vote thereon by the governor.

4 (2) Section 2 of this act takes effect one year after section
5 38-33.3-401 (2) (a) (IV), as enacted in section 3 of this act, takes effect.

REPORT TO THE LEGISLATURE ON THE

2013 STUDY OF COMPARABLE HOA INFORMATION AND RESOURCE CENTERS

Offered in compliance with C.R.S. § 12-61-406.7(1)(d)-(e) (2013)

Colorado Division of Real Estate
HOA Information and Resource Center
1560 Broadway, Suite 925
Denver, Colorado 80202
Phone 303-894-2355
real-estate@dora.state.co.us
<http://dora.colorado.gov/dre>

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Report Highlights

Statutory Mandate

Pursuant to C.R.S. § 12-61-406.7(1)(a), the Division of Real Estate has studied the functions and duties of comparable HOA Information and Resource Centers, specifically those in Florida, Nevada and Virginia. Furthermore, for each of the state centers mentioned, the division made an assessment of the structure, costs, funding, and success of the duties and functions enumerated in C.R.S. § 12-61-406.7(1)(b), including:

- The filing, investigation, verification, and resolution of complaints;
- The offering and mandating of mediation concerning complaints, as well as the referral of disputes to alternative dispute resolution services;
- Providing an expedited and inexpensive administrative hearing process for HOA –related disputes;
- The monitoring and reviewing of HOA election procedures and disputes, as well as the appointing of election monitors to conduct HOA elections;
- Determining a per unit HOA registration fee;
- Providing regulatory oversight over declarant-controlled boards for compliance concerning their fiduciary duties to the association, and the transition of control to the association owners; and
- Providing regulatory oversight to protect parties from threats or defamatory conduct with regard to HOA matters.

In accordance with C.R.S. § 12-61-406.7(1)(e), the findings and conclusions generated while conducting the study, recommendations, and a review of Colorado’s experience are presented herein.

Summary of Recommendations

Recommendation 1 - Establish a Foundation for Possible Compliance Programs for HOAs

Phasing out exemptions for pre-CCIOA HOAs and large planned communities will make the burden of compliance uniform, with the exception of some small or limited revenue HOAs. Waiting until manager licensing is underway will give the Division an opportunity to plan for any broader enforcement of the CCIOA, as well as analyze potentially cost-reducing overlaps between manager licensing and possible HOA compliance programs.

Recommendation 2 - Establish a Binding Arbitration Program for HOA Disputes

Implementing a binding arbitration program would be a cost-effective and expeditious means by which many of the disputes between homeowners and HOAs can be resolved. In particular, governing document issues, which are the most common type of complaint the Center receives, would be within the scope of this program, reducing the burden on Colorado’s court system.

Recommendation 3 - Develop a Referral System for Mediation of HOA Disputes

Mediation is an important component of a comprehensive dispute resolution system. Encouraging dialogue and reducing animosity within a community should be a top priority, as it has the potential to not only resolve any given dispute but also increases the chance that future disputes will be handled amicably within the HOA, thus potentially avoiding escalation of additional disputes to the Center. The expense associated with maintenance of this list will be vastly lower than that of an in-house mediation program.

Recommendation 4 - Revise Registration Requirements

Clarifying the registration requirements will reduce the number of misleading registrations and reduce confusion on the part of HOAs by not requiring an HOA to make their mailing address representative of the physical locations of the units constituting the HOA. Other requirements pertain to the binding arbitration program or potential compliance programs.

Recommendation 5 - Establish a Per-Unit Fee

A per-unit fee would allow the Center to fund the binding arbitration program and would be fairer to small HOAs.

Recommendation 6 - Establish an Election Monitoring Program

Trustworthy voting processes are essential to ensure that the actions taken by the board are representative of the desires of homeowners. Election monitoring can guarantee that HOAs hold proper elections and send a message that election misconduct is not acceptable.

Overview

A unit owners' association ("HOA") is a corporation, nonprofit or otherwise, formed to preserve and enhance property values within a community.¹ HOAs accomplish this by a variety of means, including the maintenance of common areas, enforcement of standards, and provision of desirable services to unit owners ("homeowners"). By purchasing a unit ("home") within an HOA, homeowners exchange certain freedoms for these benefits.

While the concept of the HOA has been very successful, both within the State of Colorado and the nation as a whole, homeowners have expressed the need for assistance when problems arise. In response to growing legislative and consumer concern regarding HOAs, the Colorado Legislature ("Legislature") created the HOA Information and Resource Center ("Center") in 2010.² Throughout its three-year history, the Center has logged more than 10,444 inquiries and 2,264 complaints. At the time of writing, the Center has registered 8,838 HOAs. Based solely upon self-reporting by HOAs within these registrations,³ HOAs contain 879,187 homes in Colorado, including single-family houses, townhouses, and condominiums.

From the perspective of a homebuyer, HOAs and the homes they encompass are inseparable. Thus, a homebuyer must factor into their purchasing decision the desirability of the home and the HOA. HOAs, in order to attract new homeowners, differentiate themselves through the services they offer, by the state of the community, and by maintaining rules and order. Unlike with other service providers, a dilemma for the prospective homeowner is that once they purchase a home, they cannot choose a competitor unless they sell or otherwise dispose of it and purchase another within a different HOA.

Few prospective buyers would knowingly choose to purchase a home in a dysfunctional HOA. Although state laws, such as the Colorado Common Interest Ownership Act ("CCIOA"), and the governing documents of an HOA grant homeowners certain legal rights, the multitude of complaints received by the Center⁴ attests to the difficulty many homeowners face when an HOA is out of compliance. Unfortunately, homeowners discover the majority of problems only after completing the purchase, as the inner dynamics within an HOA are not readily apparent from outside.

The traditional avenue for resolving disputes has been through the courts, but the expense and complexity inherent in filing a suit can act as an effective deterrent. This is especially true for matters that may not have large financial implications for any particular homeowner, but are nonetheless important to the HOA as a whole, such as election misconduct,⁵ or the withholding of records.⁶

Florida, Nevada, and Virginia have already implemented regulatory frameworks to address these and other issues pertaining to HOAs. The Division of Real Estate has conducted a study of the aforementioned states and, after careful review of Colorado's experience, presents this report, along with recommendations, as mandated in C.R.S. § 12-61-406.7(1)(e).

¹C.R.S. § 38-33.3-302 – Organization of unit owners' association.

²HB10-1278, as codified in C.R.S. § 12-61-406.5(1), effective January 1, 2011.

³HB13-1134 made the registration requirement more inclusive by the addition of pre-CCIOA HOAs.

⁴2012 Annual Report of the HOA Information and Resource Center, page 7 (Complaints).

⁵2012 Annual Report of the HOA Information and Resource Center, pages 10-11, 14 (Voting – proxies).

⁶2012 Annual Report of the HOA Information and Resource Center, pages 10-11, 14 (Association records).

Study Findings

Structure and Funding of the Other States' HOA Offices

Florida

The Division of Florida Condominiums, Timeshares, and Mobiles Homes (“Florida Division”) offers services and consumer protection for those who reside in regulated communities within Florida. The Florida Division investigates complaints, reviews and approves condominium and cooperative documents, provides educational services and information to the public, and conducts mandatory arbitration of disputes. Two bureaus are contained within the Florida Division, the Bureau of Compliance and the Bureau of Standards and Registrations. Also within the Florida Division is the Office of the Condominium Ombudsman, a resource for condominium associations, board members, and owners as well as an arbitration section, consisting of one supervisory arbitrator and six arbitrators, all of whom are attorneys, one mediator, and two administrative assistants.⁷

Homeowners' Associations in Florida

Florida defines a homeowners' association as a community subdivision, which is separate and distinct from a condominium association.⁸ The division does not have investigatory power over homeowners' associations. Due to increasing interest concerning homeowners' associations, the State of Florida recently established a homeowners' association registration system to find out how many exist in the state.⁹

Bureau of Compliance

Employing roughly 56 full-time employees, the Bureau of Compliance maintains four regional offices and handles compliance issues, including the complaints of unit owners.

Bureau of Standards and Registration

The Bureau of Standards and Registration reviews and approves public disclosure documents by entities offering units covered by the division to the public.¹⁰ The bureau has roughly 25 full-time employees.¹¹

Office of the Condominium Ombudsman

The Office of the Condominium Ombudsman (“Florida Office”) is a neutral resource for unit owners, boards of directors and associations, assisting them in understanding their rights and responsibilities.

The Florida Office:

- Prepares and issues reports and recommendations for the division;
- Acts as a liaison between the division, unit owners, board members, and managers;
- Provides education and resources to unit owners, board members, and managers;
- Monitors and reviews procedures and disputes concerning condominium elections or meetings;

⁷Legislative Budget Request for the Department of Business and Professional Regulation for 2014-15 Fiscal Year (10/15/2013), page 111.

⁸Fla. Stat. § 720.301(9).

⁹Fla. Stat. § 720.303(13), Chapter 2013-218.

¹⁰<http://www.myfloridalicense.com/dbpr/lsc/LSCMHOrganization.html>.

¹¹Kevin Stanfield (Florida Deputy Director), interviewed by Gary Kujawski (CO HOA Officer), on 10/28/13.

- Assists with the resolution of disputes between unit owners and associations;
- Assists with the resolution of disputes between unit owners;
- Encourages and facilitates voluntary meetings with and between unit owners while maintaining neutrality; and
- Recommends action for misconduct.¹²

The Florida Office is limited to matters involving condominium associations with regard to the above-referenced duties, as the ombudsman does not have the authority to investigate subdivision association complaints. The ombudsman's office does not investigate or enforce complaints, or provide mediation or arbitration, which are the roles of the Bureau of Compliance, arbitration section, or private mediation services. The Florida Office has seven employees¹³ and a budget of \$437,986.00.¹⁴

Fees and Funding

The division collects the following fees:

- A \$4 annual fee for each residential unit in a condominium or cooperative association;
- A \$2 fee for each timeshare week;
- A \$4 annual fee for each mobile home lot;¹⁵ and
- An assortment of other yacht and ship fees.¹⁶

Although Florida is implementing a registration system for HOAs, no per unit fee has been established for HOAs at the time of writing.¹⁷

The Florida Condominiums, Timeshares, and Mobiles Homes division's fiscal year budget for 2013-2014 was \$7,221,790, with 111 positions.¹⁸

Nevada

The Nevada Division of Real Estate ("Nevada Division"), which is a division of the Department of Business and Industry, contains the Office of the Ombudsman for Common-Interest Communities and Condominium Hotels ("Nevada CIC Office") and a seven-member Commission for Common-Interest Communities and Condominium Hotels ("Nevada Commission") that adopts regulations, advises the division, and handles disciplinary matters. Nevada's Uniform Common-Interest Ownership Act and the CCIOA share a similar heritage; both are adaptations of the Common Interest Ownership Act, as promulgated by the National Conference of Commissioners on Uniform State Laws.

¹²Fla. Stat. § 718.5012.

¹³Legislative Budget Request for the Department of Business and Professional Regulation for 2014-15 Fiscal Year (10/15/2013), page 112.

¹⁴Legislative Budget Request for the Department of Business and Professional Regulation for 2014-15 Fiscal Year (10/15/2013); Based on the existing expenditures for fiscal year 2012-13 (page 116).

¹⁵F.A.C. Chapter 61B-30.001 Fees.

¹⁶F.A.C. Chapter 61B-60.002 General Provisions; Forms and Fees.

¹⁷Fla. Stat. § 720, Chapter 2013-218.

¹⁸2013-2014 Operating Budget, Agency Format, <http://transparencyflorida.gov>.

Office of the Ombudsman for Common-Interest Communities and Condominium Hotels

The Nevada CIC Office was created to assist common-interest community unit owners and association board members in understanding their rights and obligations under state law and the governance of their associations.

The duties of the Nevada CIC Office include:

- Assisting in the processing of claims submitted to alternative dispute resolution;
- Providing education to owners, associations, board members and community managers;
- Investigating disputes involving violations of CIC law or an HOA's governing documents; and
- Registering associations organized within the state.¹⁹

The Nevada CIC Office does not arbitrate or act as a referee for disputes; nor does it make determinations on compliance matters, as the Nevada Division's compliance section, or hearings before the Nevada Commission handle these functions.

Commission for Common-Interest Communities and Condominium Hotels

The Nevada Commission, a seven-member panel appointed by the governor, acts as an advisory board to the division, approves and adopts regulations, handles disciplinary matters, and has authority to investigate and enforce provisions of Nevada's Common Interest Ownership Act.²⁰ The commission can impose fines not to exceed \$1000 for each violation and has the power to remove board members or officers of the association.²¹

Fees and Funding

An annual assessment of no more than \$3.00 per unit in each community that is not exempt funds the office. Late receipt of unit fees results in a penalty and interest, if applicable.²²

Nevada's Business and Industry 2012-2013 annual budget for Common Interest Communities was \$2,929,656, with a \$1,483,952 balance carried over from the previous year, funding seventeen full-time positions.²³

Virginia

The Office of the Common Interest Community Ombudsman ("Virginia CIC Office") and the Common Interest Community Board ("Virginia CIC Board") are within the Virginia Department of Professional and Occupational Regulation ("DPOR").

Office of the Common Interest Community Ombudsman

The Virginia CIC Office is a resource for unit owners, boards of directors and community managers.

The Virginia CIC Office:

¹⁹NRS § 116; and at www.red.state.nv.us/cic/about.htm.

²⁰NRS § 116.600, *et seq.*

²¹NRS § 116.785.

²²NRS § 116.31155.

²³Nevada Legislative Counsel Bureau Budget Account Detail with Position Summary for Commerce & Industry, Page 531, dated June 8, 2011.

- Assists members in understanding their rights and the processes available for resolving issues with their common interest community;
- Offers referrals to alternative dispute resolution services;
- Receives and reviews “notices of final adverse decisions” from persons who believe an association violated common interest community laws and regulations;
- Makes a final determination on whether a "notice of final adverse decision" may constitute a violation of CIC law or regulation, and, if so, may refer the matter to the CIC board; and
- Issues nonbinding explanations, but not interpretations, of laws and regulations governing associations.²⁴

The Virginia CIC Office does not review any complaints alleging violations of association governing documents or provide alternative dispute resolution, legal advice, or interpretation. The final determination issued by the ombudsman is nonbinding.

Common Interest Community Board

The Virginia CIC Board was established to regulate common interest community managers and certain licensed management firm employees, register condominium and timeshare projects, and handle certain matters pertaining to associations referred to it by the ombudsman. The board can take enforcement action, including issuing cease and desist orders, initiating suit to enjoin an act or practice, and imposing penalties for violations of Virginia’s CIC laws.²⁵

Fees and Funding

The office collects a fee for community association registration and renewal fees based upon a sliding scale:²⁶

Lots/Units	Application Fee	Renewal Fee
1-50	\$45	\$30
51-100	\$65	\$50
101-200	\$100	\$80
201-500	\$135	\$115
501-1000	\$145	\$130
1001-5000	\$165	\$150
>5000	\$180	\$170

Two additional fees the offices assesses are a recovery fund fee of \$25, and an amount based upon gross assessment income, including any mandatory fees that the association imposes on its members, during the preceding year. The amount due is as follows:²⁷

0.05% of gross assessment income	Amount Due
< \$10	\$10
from \$10 to \$1000	0.05% of gross assessment income
> \$1000	\$1000

²⁴Va. Code § 55-530; and www.dpor.virginia.gov/CIC-Ombudsman/#what-ombudsman.

²⁵Va. Code § 54.1-2351.

²⁶18 VAC 48-60-60 (Virginia Register of Regulations).

²⁷Va. Code §§ 55-516.1.C, 55-79.93:1.C, 55-504.1.C.

Biennial revenue for the CIC department of the DPOR for 2010-2012 was \$2,022,799, with biennial expenditures of \$1,443,162.²⁸ Interest earned and monies collected annually from the Common Interest Community Management Fund finances the ombudsman's office.²⁹

Comparison of Functions and Duties

Function or Duty ³⁰	Colorado	Florida	Nevada	Virginia
I - Accepts Complaints	YES	YES ³¹	YES ³²	LIMITED ³³
I - Investigates/Verifies Complaints	NO	LIMITED ³⁴	YES	YES ³⁵
I - Resolves Complaints	NO	YES	YES	LIMITED ³⁶
II - In-House Mediation	NO	YES ³⁷	YES ³⁸	NO
III - Mandates Mediation	NO	NO	LIMITED ³⁹	NO
IV - ADR Referrals	YES ⁴⁰	YES	YES	YES
V - Administrative Hearing	NO	YES	YES	YES ⁴¹
VI(A) -Monitor/Review Election Procedures, Disputes	NO	YES	YES	YES ⁴²
VI(B) -Reports Alleged Election Misconduct	YES ⁴³	YES	YES	NO
VI(C) - Appoints Election Monitors	NO	YES	YES	NO
VII –Per-Unit Fee	NO	YES	YES	NO ⁴⁴
VIII - Oversight Over Declarant Boards	NO	YES	YES	YES
IX - Protect (...) from Threats, Defamation	NO	NO	YES ⁴⁵	NO
X – Other HOA Functions or Duties Studied	NONE			

²⁸Virginia Department of Professional and Occupational Regulation, Biennial Report 2010-2012, page 4.

²⁹Va. Code § 55-530.

³⁰Numbering from C.R.S. § 12-61-406.7(1)(b).

³¹For subdivisions, only petitions for mandatory, binding arbitration of election and recall disputes are accepted.

³²In the form of "Intervention Affidavits".

³³The Virginia CIC Office will not accept complaints involving an association's governing documents.

³⁴The Florida Division does not have authority to investigate subdivisions.

³⁵Va. Code § 55-79.99(A); a function of the Virginia CIC Board.

³⁶The Virginia CIC Office may refer complaints that involve violations of CIC laws or regulations to the Virginia CIC Board for possible regulatory action, but is not empowered to resolve other complaints or disputes.

³⁷Alongside private mediation, the Florida Division has one in-house mediator in the Bureau of Compliance.

³⁸Alongside private mediation, the Nevada CIC Office has an Ombudsman Informal Conference/Mediation program.

³⁹Pre-suit mediation is mandated if both parties do not agree to use the referee program – NRS § 38.310.

⁴⁰The HOA Information Officer provides information about ADR services via phone and e-mail. The Center's website also provides links to ADR providers.

⁴¹Va. Code § 55-79.99(B); a function of the Virginia CIC Board.

⁴²The Virginia CIC Board only reviews egregious instances of election misconduct referred by the Virginia CIC Office.

⁴³2012 Annual Report of the HOA Information and Resource Center, pages 10-11 (Elections and Voting).

⁴⁴Funding is provided by a tiered fee, based the number of units, and a percentage of annual assessment income.

⁴⁵Nevada state law also protects homeowners against bullying and retaliation. NRS §§ 116.31183, 116.31184.

Analysis and Recommendations

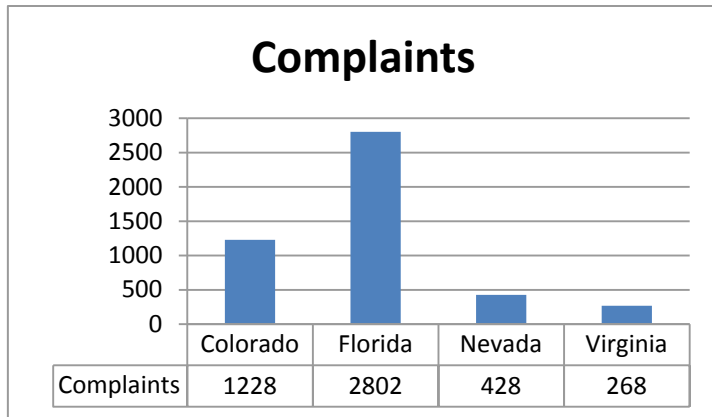
The Division has prepared this list of recommendations and analysis for consideration by the Legislature. Many of the recommendations incorporate aspects of HOA programs already operational in Florida, Nevada, and Virginia, with selection limited to measures that are efficient, cost-effective, and applicable to Colorado.

Recommendation 1 - Establish a Foundation for Possible Compliance Programs for HOAs

Phase Out Exemptions for Pre-CCIOA HOAs and Large Planned Communities

The Division recommends that the exemptions discussed below expire prior to any compliance program becoming effective.

CCIOA compliance efforts would be curtailed for some pre-CCIOA HOAs,⁴⁶ as those entities may not be subject to all provisions of the CCIOA.⁴⁷ Special exemptions also exist for large planned communities,⁴⁸ and these could pose similar problems for future compliance programs. Frustration by homeowners living in HOAs that the CCIOA exempts from provisions that the Division would enforce for some HOAs, but not their own, may constitute grounds for emphasis towards greater uniformity and equality in the law. After the two decades that have passed since the CCIOA was enacted, pre-CCIOA issues are still a routine source of confusion and concern, and are poised to grow as the legislative gap is widened by amendments to the CCIOA.



Analysis on Future Compliance Possibilities for HOAs

The Division recommends that its first objective should be the successful implementation of the manager-licensing program. Waiting until manager licensing becomes effective will also allow the Division to determine appropriate staffing and enforcement capabilities for any possible expansion to include HOAs. The Director of the Division of Real Estate will

make a progress report to the Legislature on or before January 1, 2016, which may be an opportune time to discuss any possible compliance programs for HOAs.

Florida, Nevada, and Virginia all have compliance mechanisms in place for HOAs to complement manager licensing. Between July 1, 2012 and June 30, 2013, the Florida Division received 1,802 complaints regarding condominium associations, containing 2,802 alleged violations.⁴⁹ In fiscal year

⁴⁶2012 Annual Report of the HOA Information and Resource Center, Registration, Pre-CCIOA, page 3.

⁴⁷C.R.S. § 38-33.3-117.

⁴⁸C.R.S. § 38-33.3-116.3.

⁴⁹Division of Florida Condominium, Timeshares, and Mobile Homes Annual Report for Fiscal Year 2012-2013, pg 1.

2013, 262 Intervention Affidavits, or complaints related to a board of directors and 166 Statements of Facts, or complaints related to managers, were submitted to the Nevada Division.⁵⁰ The Virginia CIC Office received 268 complaints during the 2012-2013 reporting period. Included in that number are Notices of Final Adverse Decision, with 34 being received in 2013.⁵¹ At the time of writing, for 2013, the Center has received 1228 complaints.

Starting January 1st, 2015, a community association manager licensing and regulation regime, in the form of HB13-1277, will include violations of the CCIOA as one of the deeds that may result in actions against the licensee.⁵² For 2012, however, the share of complaints attributable to managers only totaled 27% of those received.⁵³ In many instances, managers are merely trying to carry out the will of the HOA board and this legislation, without an accompanying law to regulate the behavior of the HOA, ensures that any penalties will land solely on managers. Of the complainants that have contacted the Center, 23.51% are from self-managed HOAs. An additional concern is that this law may encourage HOAs to forego professional management, and switch to self-management as insulation from investigation into violations of the CCIOA. After July 1, 2015, complaints concerning managers will begin to flow in, and complainants may seek to implicate managers in order to obtain state intervention if current law exempts HOAs from enforcement.

Any future authorization given to the Division to investigate, verify, and take appropriate enforcement actions, if warranted, on complaints, would need to be on the basis of violations of the CCIOA and other applicable laws, such as the Colorado Revised Nonprofit Corporation Act and Colorado Business Corporation Act.⁵⁴ In addition, such an authorization should place instances of election misconduct established by the Division within the scope of enforcement, as commensurate to the severity of such acts.

Declarant-Controlled Boards

The CCIOA contains many provisions that govern declarants' actions,⁵⁵ including declarant transition and turnover of control of the association to homeowners. These matters should be handled in any future compliance program as other violations of the CCIOA are, which accords with the approach taken by Florida, Nevada, and Virginia, which provide oversight over declarant-controlled boards by the same means as other boards.

Add Penalties for Failing to Produce Records

The Center is receiving complaints and numerous inquiries concerning the ability of homeowners to obtain association records pursuant to HB12-1237⁵⁶ and the unreasonable costs associated with obtaining these documents. The Division recommends the addition of a penalty in the CCIOA for not producing these records, such as tying it to the HOAs' ability to file and enforce liens.

⁵⁰Nevada CIC Compliance Section Reporting Period for Fiscal Year 13: 7/1/12 to 6/30/13, page 1.

⁵¹Virginia Office of the Common Interest Community Ombudsman Annual Report 2012-2013, pgs 2, 3.

⁵²C.R.S. § 12-61-1010(1)(e).

⁵³2012 Annual Report of the HOA Information and Resource Center, Complaint Types, page 8.

⁵⁴C.R.S. § 38-33.3-306(1) – Bylaws.

⁵⁵C.R.S. §§ 38-33.3-205, 38-33.3-210, 38-33.3-303(5), *et seq.*

⁵⁶Codified in C.R.S. § 38-33.3-317 – Association records; effective January 1st, 2013.

Recommendation 2 - Establish a Binding Arbitration Program for HOA Disputes

Study Findings and Analysis of Arbitration Programs in Other States

Many homeowners have expressed a desire for an expedited, low-cost, non-adversarial, out-of-court means by which to settle disputes;⁵⁷ arbitration, when conducted by an impartial arbitrator, can offer this.⁵⁸ Two of the three HOA offices selected for study utilize binding arbitration. The Nevada CIC Office offers both binding and nonbinding arbitration for the resolution of disputes,⁵⁹ while Florida state law mandates binding arbitration⁶⁰ by the Florida Division for HOA election and recall disputes; Florida's legislature has found ADR successful enough to incorporate the following declaration,⁶¹ preceding that requirement, in law:

“The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation.”

Florida's Bureau of Compliance has a ten-member in-house arbitration section⁶² that provides mandatory arbitration of disputes for over twenty-six thousand condominium associations⁶³ in the State of Florida. Florida has a population of over nineteen million.⁶⁴ The combined base salaries for those within the arbitration section total \$505,028.68. The numbers of arbitrations involving condominium or subdivision associations were 510 in 2011 and 555 in 2012.⁶⁵ On average, cases were resolved within 72 days of submission for fiscal year 2012-2013.⁶⁶

Electing to provide two forms of arbitration, the Nevada CIC Office uses both the referee program, which limits monetary awards to \$7500, and traditional arbitration to resolve disputes; both divert disputes away from the court system. The referees and arbitrators are attorneys required to meet certain standards⁶⁷ and are not employees of the Nevada Division. The referee brings the parties together to listen to both sides of the dispute, reviews the evidence and governing documents, and then makes a

⁵⁷In 2013, the Center participated in over fifty public HOA forums, seminars, and conferences; attendees at those functions overwhelmingly related to the HOA Information Officer the desire and need for out of court alternatives for resolving HOA disputes.

⁵⁸Black's Law Dictionary 96 (5th ed. 1979) – Arbitration.

⁵⁹NRS § 38.330.

⁶⁰Fla. Stat. §§ 720.306, 720.311.

⁶¹Fla. Stat. § 720.311(1).

⁶²Legislative Budget Request for the Department of Business and Professional Regulation for 2014-15 Fiscal Year (10/15/2013), page 111.

⁶³http://www.myfloridalicense.com/dbpr/sto/file_download/public-records-CTMH.html.

⁶⁴2012 Estimate by U.S. Department of Commerce, United States Census Bureau.

⁶⁵Kevin Stanfield (Dep. Director of FL Division), interviewed by Gary Kujawski (CO HOA Officer), on 10/28/13.

⁶⁶Department of Business and Professional Regulation – Long Range Program Plan, 09/20/13.

⁶⁷NRS § 38.340(1) provides that Nevada's Real Estate Division may require satisfactory proof that an arbitrator has received the training and experience necessary. On this basis, the division requires that arbitrators maintain a status of “Good Standing” with the “State Bar of Nevada”; see CIC-REF-14-001.

decision on the matter; participating without a hearing is an option for the parties. No awards of attorneys' fees or costs are made by the referee. The Nevada Division has related that the referee program has had good success since it began in July of 2012.⁶⁸ As of March 1, 2013, the Nevada Office reviewed and sent 68 cases to a referee for a hearing and a determination concerning governing document issues, and, on average, the referee issued a determination within a month.⁶⁹

Colorado state law already encourages HOAs to require pre-suit mediation or arbitration⁷⁰ and explicitly establishes the acceptability of an association compelling binding arbitration via its governing documents.⁷¹ However, by yielding the implementation of ADR to associations, associations are able to grant themselves conditions that are more favorable, such as the ability to designate the arbitrator in a dispute, which may threaten impartiality, or exempt certain matters from ADR that the association would prefer to litigate in court.⁷² The ability of an HOA to contractually oblige a homeowner to submit disputes to ADR while preserving the HOA's ability to choose the most advantageous venue when seeking redress against a homeowner is distinctly one-sided.

Binding Arbitration Program Recommendations

The Division proposes to restore equality by providing a pathway for the resolution of disputes that meets the criteria expected by consumers with the added benefit of finality, by a neutral third-party entity or a panel of administrative law judges similar to that in the Colorado Public Utilities Commission. This arbitration program would accept petitions accompanied by a reasonable filing fee for binding arbitration. The expense incurred by program in employing arbitrators or administrative law judges could be supported by the per-unit fee discussed hereafter or after the Nevada model where the participants fully pay for the arbitrators fees which are limited and subsidized.

The top category of complaints the Center receives are matters involving governing documents;⁷³ deciding the validity of these claims is not likely to require hearings or a "mini-trial", reducing the need for parties to be physically present before the arbitrator and expediting the process. Unlike mediation, where encouraging dialog is a key part of the process, *ex parte* communications between an arbitrator and the parties to the dispute may lead to allegations of impropriety; relying primarily on submitted statements and documentation not only mitigates this risk but does not encounter the logistical problems associated with in-house mediation.

Under this system, homeowners and their HOAs would retain the right to file claims against the other in court. In addition, parties would have the right to have a court vacate the arbitration award for the grounds enumerated in the Colorado Revised Uniform Arbitration Act⁷⁴ or Federal Arbitration Act, as

⁶⁸Ken Richardson of Nevada Ombudsman's Office, interviewed by Gary Kujawski (CO HOA Officer), on 10/22/2013.

⁶⁹Real Estate Division - Office of the Ombudsman 2013 Biennial Report, page 5.

⁷⁰C.R.S. § 38-33.3-124(1)(a)(I) – (...) Alternative Dispute Resolution Encouraged (...).

⁷¹C.R.S. § 38-33.3-124(3) – (...) Policy Statement Required.

⁷²The Officer has obtained governing documents that require binding arbitration of disputes but exclude actions brought by the association pertaining to enforcement of the association's declaration, bylaws or rules and regulations.

⁷³2012 Annual Report of the HOA Information and Resource Center, page 10, Not Following Governing Documents.

⁷⁴C.R.S. § 13-22-223, *Vacating award*.

applicable. Unlike non-binding or non-mandatory arbitration programs, aggrieved parties would not need to deal with the prospect of a trial *de novo* or an uncooperative party trying to make the dispute as costly as possible by rejecting offers of ADR. Smaller or less financially secure HOAs would also greatly benefit, as legal expenses that could otherwise consume significant resources would no longer be a factor with a fixed-cost process.

For binding arbitration to be effective, the Division recommends the following system:

For HOAs to Petition for Binding Arbitration

Purchasing a home within an HOA entails acceptance of the HOA's governing documents; as such, the documents are binding upon homeowners, and those that already contain binding arbitration clauses that apply to homeowners would be required to adapt them to specify the designated arbitration program. An HOA without a binding arbitration clause would have the choice of adopting such a clause, providing that it designates the arbitration unit, or obtaining the consent of the homeowner in question by some other means. The HOA must include either evidence of contractual obligation or agreement on the part of the homeowner along with its petition. If, after review, the arbitration unit determines such evidence or agreement to be valid and binding, it will proceed to arbitrate.

For Homeowners to Petition for Binding Arbitration

Notwithstanding any provision of their association's governing documents to the contrary, after a homeowner submits a valid petition, the arbitration unit shall have the power to compel their association, regardless of whether it has adopted a binding arbitration protocol, to enter into binding arbitration with them as arbitrator. Should the Legislature enact the restrictions on retaliation discussed hereafter in "Prohibit Retaliation", HOAs would be forbidden from retaliating against a homeowner who files a petition.

Notice Requirement

All three states' HOA offices require an aggrieved party to provide some form of notice to a respondent before they file a complaint or dispute. Virginia requires a homeowner to obtain a "Notice of Final Adverse Decision" from their HOA before filing a complaint, while Nevada requires a claimant to send written notice to the respondent before submitting an "Intervention Affidavit". Florida, which the Division has chosen to be the model for this aspect of the binding arbitration program, requires proof by a petitioner that they gave notice to the respondent.⁷⁵

The Division recommends that all petitioners must provide proof of the notice given to the respondent as part of a valid petition. This notice would consist of the nature of the dispute, the remedy expected of the other party, and a warning that a petition for arbitration may be filed should the other party not comply. Once the petitioner receives an unsatisfactory response or the period discussed below in "Revise Written Dispute Policy Requirement" has elapsed without a response, the petition is eligible for filing. A petitioner must accompany their petition with the original request and, if received, a response, along with an explanation addressing why it is inadequate. If the petitioner did not receive a response, he or she must provide documentation of the effort to provide notice. These preliminary steps will give

⁷⁵Fla. Stat. § 718.1255(4)(b).

the homeowner or HOA an opportunity to address and possibly resolve the other's grievance as well as reduce the amount of work necessary by the arbitration unit in gathering documentation.

Revise Written Dispute Policy Requirement

An HOA's written dispute policy⁷⁶ shall provide for submission of the aforementioned notice, and a reasonable period within which the homeowner should expect a response. If an HOA has a binding arbitration clause, the HOA must establish the period in which the HOA expects a homeowner to respond to a notice. An HOA shall also include prominent reference to the designated arbitration unit's dispute resolution services in said document.

Provide for Mediation through the Mediation Referral System

The parties may agree to mediate at any time prior to the arbitrator making an award. After agreeing to mediate, the parties must mutually select one of the mediators provided on a list supplied by the Center, as discussed below in "Develop a Referral System for Mediation of HOA Disputes". If the parties fail to come to an agreement as to the selection of a mediator or they request the Center to select a mediator on their behalf, the Center shall select one of those listed within proximity of the parties. The Center will only give preferential selection to a subset of mediators when the situation calls for special qualifications (e.g., fluency in a particular language, skills required for certain disabilities, etc.). The arbitrator shall also have the authority to request the parties to attempt mediation, when he or she feels that the situation is particularly suitable for it. If any side should refuse to consider mediation, they shall not be eligible for an award of their attorney's fees and costs, if applicable. If the parties do not agree to settle during mediation, arbitration shall resume.

Cognizant of the impact that the expense of mediation may have on parties with limited financial resources, both Florida and Nevada provide ways to reduce the cost associated with mediation. Florida provides a list of volunteer mediators⁷⁷ while Nevada provides a subsidy.

Recommendation 3 - Develop a Referral System for Mediation of HOA Disputes

The Legislature has already stated that resolving HOA disputes in court is inefficient.⁷⁸ Many of the complaints received by the Center involve poor communications by HOAs.⁷⁹ Unfortunately, when communications between homeowners and HOAs break down, disputes can tear apart communities. Regardless of the outcome of a dispute, homeowners will likely still be residing in the same HOA, which makes fostering better relationships within the community a top priority. Mediation can help by bringing together the parties to a dispute in a constructive atmosphere that engenders reconciliation and voluntary agreement before either party takes potentially irreparable actions.

Unnecessary litigation has adverse effects for all the parties involved. HOAs must compensate for unexpected legal expenses, in many instances by raising assessments on the entire community, possibly leading to further discontent, distrust, and resentment. Homeowners tend to be at a disadvantage when

⁷⁶An HOA is required to have a written dispute policy pursuant to C.R.S. § 38-33.3-124(1)(b).

⁷⁷Fla. Stat. § 718.1255(4)(f).

⁷⁸C.R.S. § 38-33.3-124(1)(a)(I) – Legislative Declaration (...).

⁷⁹2012 Annual Report of the HOA Information and Resource Center, Complaint Types, page 10.

defending an action brought by an HOA in court; they have to utilize their own financial resources, which often are more limited than those of the HOA, they are not experienced in dealing with litigation, and the legal resources available to represent them in these types of matters are limited. As an example of the impact that high demand for low-cost legal resources is creating, the HOA Information Officer has learned from homeowners that the Metro Volunteer attorney referral network is not even handling any HOA matters at this time.

Courts already refer many cases involving HOA disputes to mediation at the outset. Once a party initiates proceedings, however, damage to whatever already fragile sense of trust exists is likely complete. Diverting these disputes to mediation prior to filing in the courts could also lessen the administrative burden on the court system by resolving some disputes beforehand and removing the need for judges to refer disputes to mediation.

Although regulation of mediation is well outside the scope of this report, the Mediation Association of Colorado (“MAC”) has expressed support for the Center developing a list of qualified mediators for referrals.⁸⁰ While Florida’s Division of Condominiums, Timeshares and Mobile Homes does have one in-house mediator who travels across Florida,⁸¹ most mediations are conducted by private mediators of whom the division lists. Nevada exclusively relies upon private mediators, with the exception of conferences undertaken by the ombudsman.

Mediators frequently conduct sessions with the parties present in person. During mediation sessions, being able to perceive non-verbal communications, provide a calm and distraction free environment, and have the parties sign-off on a settlement agreement may make mediation more successful, as opposed to mediation carried out via telephone. With a state as large and with as much difficult terrain as Colorado, the logistics of relying solely upon in-house mediators would be challenging unless the possibility of mediation in person is removed or the Center is significantly expanded to include regional branches, similar to the Florida Division.

As one of two states to offer in-house mediation, Florida’s arbitration section, which employs one in-house mediator, has four branches throughout Florida.⁸² The in-house mediator is utilized an average of one hundred times per year, with approximately eighty mediations in 2012 out of 555, or 14 percent of, petitions taken in.⁸³ The division does not bill the parties for the services of the in-house mediator.⁸⁴

Over a two-year period, Nevada’s Ombudsman Informal Conference and Mediation program issued approximately 111 invitations to conferences.⁸⁵ Out of the 111 conferences by the ombudsman in 2012-2013, 53% ended in an agreed-upon solution;⁸⁶ there is no cost to the parties involved. Although Nevada’s Real Estate Division does not maintain branches throughout the state, 95% of HOAs within

⁸⁰Mediation Association of Colorado, in memo to Gary Kujawski (CO HOA Officer), dated 10/20/2013.

⁸¹The Florida Division classifies this position as a Senior Management Analyst II.

⁸²These branches are located in Tallahassee, Orlando, Tampa, and Fort Lauderdale.

⁸³Kevin Stanfield (Florida Deputy Director), interviewed by Gary Kujawski (CO HOA Officer), on 11/6/13.

⁸⁴Kevin Stanfield (Florida Deputy Director), interviewed by Gary Kujawski (CO HOA Officer), on 11/6/13.

⁸⁵Office of the Ombudsman – Real Estate Division, 2013 Biennial Report.

⁸⁶Office of the Ombudsman – Real Estate Division, 2013 Biennial Report.

Nevada are located in two counties, Clark, which contains Nevada's most populous city, Las Vegas, and Washoe, of which Reno is the county seat.⁸⁷ Colorado's situation is not similar to Nevada's, as only 56% of HOAs are located in areas easily accessible from Denver.⁸⁸

At present, the Center only provides referrals to organizations offering ADR, and not to specific ADR professionals. This leaves the task of selecting an ADR professional appropriate to the situation up to the individual requesting information. As professional mediators are already present throughout Colorado,⁸⁹ a private mediation program would be a less-costly alternative to in-house mediation. Florida and Nevada have incorporated private mediation programs.

The Division recommends that the Center be authorized to develop a mediation referral system for HOA disputes, and that it establish a standard for experience with HOA-related matters as a basis for qualification of mediators. Mediators who meet the standard would be eligible for entry onto a statewide list. As the Center has already deployed an informational website⁹⁰ for HOA related matters, the Center would also be responsible for the maintenance and publication of this list.

Recommendation 4 - Revise Registration Requirements

The following recommendations are for information that HOAs would provide in addition to that already specified as part of the registration requirement.⁹¹ Many registrants supply addresses that are not useful for locating the homes that constitute the HOA, e.g., those of the manager or a mailing address for a post-office box, etc. For a higher certainty of accuracy, HOAs must provide a breakdown of all the homes they encompass into a list formed by a pairing of county and the city in which they are located in or in closest proximity, or cities, should they be equidistant from two or more, and a count of the homes contained therein. To plan for the distribution of legal expertise necessary for compliance efforts appropriate to the structure of HOAs within the State, HOAs should indicate whether they are a nonprofit or a for-profit corporation. A copy of the HOA's written dispute policy that incorporates the changes required hereinbefore in "Revise Written Dispute Policy Requirements", shall accompany the registration to assist homeowners submitting the notice referred to previously in "Notice Requirement".

Recommendation 5 - Establish a Per-Unit Fee

A per-unit fee would be fairer than the current per-HOA fee, as the fee would be reflective of the size of the HOA. Florida and Nevada both use per-unit fees, while Virginia uses a combination of a tiered fee along with a percentage of annual assessments to similar effect. Presently, the per-HOA registration fee is not to exceed \$50.⁹² For illustration of the impact of a per-unit fee, if a \$1 per-unit fee were

⁸⁷ Association & Unit Chart, June, 2013 - http://red.state.nv.us/CIC/stats/cic_stats_fy2013.htm.

⁸⁸ 2012 Annual Report of the HOA Information and Resource Center, Regions of HOAs (page 5); count includes Denver Central, Denver Surrounding, and the Front Range.

⁸⁹ Based on information from the Office of Dispute Resolution, part of the Colorado State Judicial Branch; the ODR maintains a database of active mediators that it has qualified in all the judicial districts within the State. It also assists those who speak Spanish to find a mediator with fluency in that language.

⁹⁰ At the time of writing, this site was the first result listed by Google for the search "colorado hoa".

⁹¹ As codified in C.R.S. § 38-33.3-401.

⁹² C.R.S. § 12-61-111.5(2)(a)(II).

established, 58% of registered HOAs would owe less than if the per-HOA registration fee was maximized at \$50. This per unit fee would be able to fund the binding arbitration program discussed hereinbefore.

Recommendation 6 - Establish an Election Monitoring Program

The Florida Office routinely monitors elections, including approximately two hundred condominium elections per year.⁹³ Election monitors report some sort of election irregularity as high as sixty percent of the time.⁹⁴ The association pays for all of the costs of the election, including the following fees:

Units	Fee
1-25	\$150
26-50	\$225
51-99	\$300
100-150	\$150 + \$2.25/unit
>150	\$150 + \$2/unit

They also charge for mileage.⁹⁵

Election monitoring would be an effective tool for helping homeowners remove board members in HOAs that undertake improper or fraudulent elections by permitting a monitor to oversee the election and make certain that proper procedures are followed. A requirement that an adequate number of homeowners must petition for election monitoring by the Center, similar to Florida's fifteen percent homeowner threshold, would be reasonable.⁹⁶ The election monitors would be qualified independent contractors, with the HOAs being responsible for all of the expenses associated with monitoring.

⁹³Telephone conference on 11/15/13 with the Ft. Lauderdale Office of the Condominium Ombudsman staff by Gary Kujawski (CO HOA Officer).

⁹⁴Rick Luther (Office of the Florida Condominium Ombudsman) via email communication to Gary Kujawski (CO HOA Officer), on 12/12/13.

⁹⁵Telephone conference on 11/15/13 with the Ft. Lauderdale Office of the Condominium Ombudsman staff by Gary Kujawski (CO HOA Officer).

⁹⁶Fla. Stat. § 718.5012.

Prohibition against Retaliation

The Colorado Legislature also requested the Division to review the states studied regarding their HOA laws concerning prohibitions against retaliation by parties in the HOA community. Nevada has a provision in state law regarding retaliation against a homeowner:

NRS 116.31183 -Retaliatory action prohibited; separate action by unit's owner.

1. An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

- a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;
- b) Recommended the selection or replacement of an attorney, community manager or vendor; or
- c) Requested in good faith to review the books, records or other papers of the association.

2. In addition to any other remedy provided by law, upon a violation of this section, a unit's owner may bring a separate action to recover:

- a) Compensatory damages; and
- b) Attorney's fees and costs of bringing the separate action.

While the Division has no recommendation at this time concerning the implementation of any prohibition on retaliation, if the Legislature added a similar provision to the CCIOA, instances of retaliation would then be subject to enforcement under the CCIOA. Nevada also has a harassment provision,⁹⁷ but as a misdemeanor, it is enforced through their criminal courts.

Harassment and defamatory conduct by homeowners against board members and other homeowners can be handled by the HOA's internal fining structure, orders for protection, and court intervention.

⁹⁷NRS § 116.31184 - Threats, harassment and other conduct prohibited; penalty.