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[Write the Colorado State HOA Office](#) if you have a concern or suggestion about HOA living in Colorado:

HOA Public Meeting Sponsored by the Colo HOA Information Office & Resource Center, Mar 18, Aurora, CO, voice your concerns, get updates on HOA legislative proposals, get answers to your questions from the Head of the State HOA Office, please attend, details within and on our [web site](#)

The Colorado HOA Forum is an advocacy group for HOA homeowner's rights. We recognize the need for HOA legislative reform to ensure effective and fair HOA governance. We identify areas of concern and offer solutions that don't interfere with or distract from the benefits and expectations of living in an HOA. Our efforts don't hinder volunteers from serving on an HOA Board and ensure such service will be the altruistic and giving experience as intended. Our efforts are directed at ensuring HOA Boards and property management companies abide by their own covenants, controls, and restrictions and State HOA laws and guidelines. We are strong advocates of making changes to current HOA law to include a homeowner dispute resolution process that is accessible, affordable, and fair for both the homeowner and HOA through a mandatory out-of-court binding process using arbiters.

Contact us at: www.coloradohoaforum.com or email us at coloradohoaforum@hotmail.com

Join our effort by signing up on our web site. The web site contains articles, reference information, current events, and tools to help you write your legislator and State offices.

Write your Colorado legislator and the Colorado Information Office and Resource Center about your concerns with HOA governance and homeowner's rights. Our web site makes this easy with links to State Representatives and the State HOA Office. THIS DOES HELP!!

Request our business cards through our web site for distribution to your neighbors or at an HOA meeting. Ask your friends and neighbors to join our movement through, it's all free.

The problem:

"...the current Court system as a means for HOA dispute resolution is a pay-to-play process that works well for the HOA and property management companies with unlimited financial resources but is too costly, complicated, and litigious for most homeowners"

"...designating our Courts for HOA homeowner dispute resolution and enforcement is like the poll tax, you could vote if you could pay, most couldn't, likewise, you can take your homeowner's complaint to Court if you have the money, most don't, this environment makes HOA legislation and HOA governing documents ineffective from the homeowner's perspective"

The solution:

"...a mandatory, out-of-court, binding, dispute resolution process using professional, mediator-arbiters for most homeowner complaints, this will have the immediate effect of making Colorado HOA laws enforceable from a homeowner's perspective ... the process is efficient, accessible, affordable, and fair for both homeowner and HOA and relieves the Court System of its' high volume of cases"

We don't need more HOA Legislation, we need to make the legislation we have more effective by including:

- ◆ Effective enforcement and penalty provisions
- ◆ An out-of-court, binding dispute resolution process
- ◆ Cap fees, fines, legal costs, and administrative add-ons on HOA homeowner debt
- ◆ Limit foreclosures on homes related to HOA debt/fines
- ◆ Regulate and license property management companies to ensure their compliance with all HOA legislation and the governing documents of the HOA's they serve.
- ◆ Eliminate or minimize real estate transfer fees on the sale of an HOA home



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Legislative Initiatives 2013

In the 2013 Colorado Legislative session there will be proposals for HOA reform. The first piece of such legislation is [HB 13-1134](#). We expect additional legislative proposals concerning HOA foreclosure law and the licensing and regulatory oversight of property management companies.

Our web site provides an overview of HB 13-1134 http://www.coloradohoaforum.com/files/hb_13-1134.pdf Public hearings on this and other HOA legislative proposals have yet to be scheduled.

HOA Public Meeting Hosted by State HOA

If you can attend this meeting, please do so. Show the Head of the Colorado HOA Information Office and Resource Center that homeowners seek information and change regarding HOA law. You will have the opportunity to direct your questions and suggestions for improvement in HOA governance directly to the Head of the State Office. Invite your State Representative or their staff aid (use our web site) to this meeting so they can listen to and observe for themselves concerns about living in HOA's. Our strength is in numbers not money from special interests. Good public attendance at this meeting will gain the attention of those making decisions on HOA legislation and also prompt the State HOA Office to have additional meetings.

HOA INFORMATION OFFICE AND RESOURCE CENTER COMMUNITY OUTREACH EVENT

The HOA Information Office and Resource Center is part of the Division of Real Estate, under the Colorado Department of Regulatory Agencies (DORA). The HOA Office acts as a clearing house for information concerning the basic rights and duties of homeowners, declarants and homeowner associations under the Colorado Common Interest Ownership Act (CCIOA). As outreach to Colorado communities, the HOA Information Officer will be present to discuss the role and function of this office, provide statistics and information regarding HOA issues and concerns that have been compiled, discuss the 2012 Annual Report and to listen to consumers and professionals regarding HOA's in your community.

March 18, 2013 (Monday)
Time: 6:00 pm to 8:30 pm
Aurora Public Library Central Branch
14949 E. Alameda Pkwy Aurora, CO 80012



Real Estate Transfer Fees [SB 11-234](#)

Senate Bill 11-234 concerns the assessment of a "transfer fee" on the seller (or buyer depending on how negotiated) of a home in an HOA. The is suppose to cover the cost to the HOA or property management to change names on a few documents and/or to verify that HOA dues are current. This Bill made such transfer fees illegal for most home sales BUT with a specific exemption in the law that excludes HOA home sales. The amount of the fee can range from a flat fee of \$100 to over \$500 or up to 1% of the sales price of the home. This is not cost recovery but profiteering through legislative exemption.

Shouldn't all this record keeping be part of the normal closing costs? Isn't this very minor administrative task what an HOA pays a property management company to complete in their baseline services? The task of transferring names on records and verifying the financial status of the homeowner with the HOA takes at most 20-30 minutes. Why illegal for most other home sales except HOA's?

We will work to have this fee made illegal for HOA's or at the very least put a cap on this money cow for the greedy of \$50 to \$75 or less. Non-HOA businesses are precluded from this practice and survived perfectly well. The argument of financial burden on HOA's and/or property management companies to complete changing names on records is totally bogus. This fee must end or be minimized.



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Alternative Collection Resolution Process

A recent email from a member in California offered some information on a process being pioneered in several states to allow for an effective, workable, and fair process in the collection of HOA debt. Let us first acknowledge that if you move into an HOA you should pay your dues and pay on time. If you don't pay your dues you should pay some penalty because for every dollar you don't pay your neighbors are making up for it.

No one is immune from sudden and unexpected financial hardship. Many lose their jobs or encounter unexpected medical bills resulting in their falling behind on HOA dues. With minor exceptions, most want to pay back dues and remain current. Financial problems for any homeowner should not be viewed as opportunity for abusive collection practices. Add on fees, lawyer created collection letters, and other administrative fees added to debt don't benefit the HOA: they go into the pockets of the collection industry. The goal should be to make it easier for the debtor to set up a payment schedule prior to turning the debt over to the collection industry. Note, we understand collection efforts cost time and money and the debtor should be responsible for such costs. However, assessing \$50—75 (or more) to issue a collection letter, adding on excessive administrative fees and high interest costs only makes payment of the debt more unlikely when the debtor is already financially distressed.

Wouldn't it be nice if there was an alternative collection resolution process that would rid debt collection of abuse and at the same time increase the rate of payment of delinquent dues, reduce foreclosure actions, and reduce the financial hardship on those attempting to do the right thing by becoming current with debt. The goal should be for the HOA to collect debt and not bury the debtor or enrich the pockets of the greed in the collection industry.

Take a read on the following articles in which programs have been implemented to benefit the homeowner and allow the HOA to collect what they are due. We'll be following up on the success of these programs and also share this with our State Representatives and State HOA Office.

[Las Vega Review Journal](#)

[Company receives license to act as HOA collection agency](#)

NCS Plus Inc., doing business as RecoverHoaDues.com, has received its license from the Nevada Financial Institutions Division to act as a collection agency for homeowners associations in Las Vegas.

The New York-based company plans to take a "softer approach" to recovering past dues and liens, said

Richard Slater, director of HOA operations. The firm charges \$20 to collect past-due amounts, eliminating costly legal fees and preventing HOAs from filing liens that could lead to foreclosure.

"Many homeowners complain they could pay their late dues, if it weren't for costly legal fees that get added to their bill," Slater said.

RecoverHoaDues.com has recovered 40 percent of delinquent fees nationwide and prevented foreclosures for 781 families in 14 states, he said.

The company uses a phone and letter campaign, skip tracing and legal letters to get homeowners to work with their HOA to avoid being reported to credit-rating agencies such as Equifax and TransUnion, Slater said

Charlotteobserver.com

[Homeowners' association gets creative with delinquent dues-payers](#)

One Mint Hill homeowner's association has found a way to get neighbors who owe association dues to pay up without turning to the courts or foreclosures.

Homeowners' associations have found themselves dealing with unprecedented numbers of homeowners either unable or unwilling to pay association dues as the real estate market crashed and recession lingered.

Many associations typically turn to liens and foreclosures when homeowners fail to pay assessments or dues, a costly and time-consuming process. Last weekend, I wrote about how some boards are trying new tactics, such as turning to rentals or agreeing to short sales.

Homeowner and association board member Shelton Lee contacted me after the story ran to share his board's creative solution to the growing number of homeowners who had stopped paying dues.

Most of these neighbors were current on their mortgage but had failed to pay association dues for various reasons.

Lee said when he joined the board five years ago he quickly realized that liens and foreclosures cost the association and rarely yielded any financial return. It costs the association about \$300 per lien and \$1,500 to pursue a foreclosure, he said.

With about 100 homeowners not paying their dues, "the homeowners' association would have gone broke," paying for all the foreclosures, he said.

He said he also didn't want to foreclose on neighbors, saying as a homeowner's association board member, his duty "is to protect dues-paying homeowners and non-

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HOA Collection Process: Continued

dues-paying homeowners" and to help keep neighborhood values healthy.

The board turned to what's known as a dunning collection agency, meaning the agency doesn't buy the past-due accounts. Rather, it writes and calls homeowners asking them to pay past dues and eventually informs them that if they don't get current their credit rating will take a hit.

The collection agency charges \$20 per account, which the homeowner pays the association back. When a homeowners' association forecloses, homeowners can stop the foreclosure late in the process by offering to pay past dues. The association, meanwhile, suffers cash flow problems and may have to charge extra assessments to cover needed repair or upkeep.

Lee said the response has been positive and swift. At least 60 of 85 delinquent homeowners in his Versage neighborhood have paid up. Others are approaching board members asking about getting current on their accounts.

People care about their credit rating because it can affect their ability to get a phone, buy a car and even land a job, Lee said.

The association, meanwhile, is building up its reserves and hasn't had to file one lien or initiate foreclosure proceedings during the past five years, Lee said.

"There is another solution to this problem," said Lee, who has been a carrier with Federal Express for 25 years. "It's been so effective."

Fiduciary Responsibilities: difficult to prove

The question of enforcing the evident fiduciary responsibilities of an HOA Board continues to come into our email box. What also continues is the fact that not only is this a grey area to argue in court but there is no definition of what this actually should entail. There is a definition within the law such as "utmost trust and confidence to manage and protect property or money". But like many things, if you go to court it is in the eye of the beholder and in this case that is a judge and not all judges think alike. Then there are the lawyers that will argue the Board, under most any circumstance, simply used their best judgment and that's all that can be expected of them. Our recommendation on this type of law suit: stay out of court.

Let's look at an example of this from a posting on our web site having to do with snow removal. Would you think authorizing the plowing and sanding of streets with no snow is acting in a fiduciary manner? How about giving out favors and free services to friends of the Board? Not implementing recommended processes that could save the HOA money? If you were to go to court and argue that the Board was not acting in a fiduciary manner you would lose. The court would say the HOA voted for these folks, empowered these folks, and they are doing the best they can. Many an HOA went bankrupt through incompetence and mismanagement of an HOA but incompetence is not breaking a fiduciary responsibility, really! Then again even when you win in Court not one Board member would be held accountable and the only real winner is the lawyer who gets paid regardless of winning or losing. Note, we are not talking about fraud or embezzlement which is criminal but a Small Claims Court case concerning breach of fiduciary responsibilities as defined in State HOA law and your governing documents.

Fiduciary responsibility, it's all open to interpretation. Try and prove a violation of this expected duty in court and you will see the lawyer and the legal system perform the old "razzle dazzle" (remember the movie "Chicago"?) and you will end up looking like the homeowner who is unappreciative of the Boards volunteer service.

On the other hand, this type of homeowner complaint will be worthy of pursuing when the day comes that we have an out of court binding dispute resolution process for HOA complaints. This would make the low expense, time, and effort complaint process on your part in arguing the fiduciary responsibility case worth while and such a case would be more decided on merit and the law versus that ole' courtroom razzle dazzle.





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Age Restricted HOA's

We occasionally receive email concerning age restricted communities: praise and caution. So a few comments are offered. Like all HOA's, some are better than others and a Board of Directors can make all the difference.

Age restricted HOA's are becoming more common in Colorado. Although low in number they are common in States such as Arizona and Florida. They have appeal for those who enjoy living among their peers. Residents also like the part-time nature of kids in the neighborhood who are rarely seen except for weekends and holidays. Seniors like the sedate and quieter living environment and enjoy the activities of the HOA that cater to their needs. These neighborhoods generally have low crime rates and property values are maintained and most provide increases. You will also find 55+ neighborhoods are well maintained with fine groomed lawns and good roads. Of course, most are maintenance free providing snow removal, lawn maintenance, and even painting of homes making home ownership feasible for older residents. Add to this no blaring stereo's, little neighborhood traffic, and a generally gated community.

Now a possible downside. One need only look to the Denver-Metro area that has several age restricted communities. Some of these communities epitomize what can happen when time comes to a standstill in their management: property values decline, they begin to look old, and the appeal to new senior residents falls. Again, our comments are provided as food for thought and not a condemnation of all senior HOA communities as they can be delightful places to live. This article will focus on what is believed to be the main reason 55+ communities fail over time.

For any HOA to be successful it should be servicing the needs of the residents and appeal to potential home buyers. Over time these factors change. Not recognizing and responding to ever changing environment is a recipe for failure. This seems to be the main flaw with many 55+ communities and it is not recognized until it is too late. It morphs from a sought after place to one that turns residential buyers off.

So how does this happen? These failing communities tend to have one common element: lifer Board of Directors. Same Board forever. Yes they are voted in repeatedly and this invites the community to be managed the same year after year, in fact decade after decade, managing the same priorities from yesterday, same activities, same management style, same rubber stamping of budgets without scrutiny, same methods to award contracts and allow the management company to basically take over the HOA (it's easier that way over the years). Then you also get the same few people in the community (call them friends of the Board) that receive favors and openness of governing the HOA becomes more closed over time. Sound

familiar to some of you? Thus, managing like it is 1970 or 1980 and nothing has changed, not the colors of the clubhouse, the same old chairs in the clubhouse and meeting rooms, same entertainment shows from the long ago, no investment in exercise facilities, etc. will catch up with the community and your property values. Therefore, it seems that this never ending retention of the same Board surely doesn't lend itself to changing with the times, open governance, or tending to the future.

The reason Board members are retained is not from a lack of candidates or people wanting to serve on the Board. Long term residents who comprise the majority of the vote simply, in many cases, reject new faces and ideas. Elections thus are highly predictable and not competitive. Elections are a familiarity contest more than based on issues and the long term viability of the community and accountability of the Board. Then there is the fact that Board members are not term limited, so they rarely or voluntarily vacate their position. Thus we see the main problem in the decline of many of these age restricted communities resting at the door step of the HOA fixture called the Board of Directors.

This non-term limited situation results in a de facto exclusion of newer 55+ residents who would otherwise contribute to the community with more up to date skills, offer new ideas and suggestions, seek productive change and ask questions and not settle for the status quo, and be more focused on understanding the current needs for a viable community while at the same time preserving and addressing the needs of the long term residents. Therefore, a good blend of long term residents and new faces on the Board will serve the community best. It allows for utilizing all the skills in the community: inclusion and openness is much more productive than secrecy and exclusion.

We are not making a statement that all long term Board members have lost touch with reality or are all incompetent. We are saying that it seems obvious that the best approach to managing the 55+ community seems to a mix of long term and newer residents. We also advocate term limits to ensure this happens. Inclusion and Board turnover mitigate the complaint that Boards operate in secrecy and with favoritism. Practicing exclusion in the management of the community, whether deliberate or not, will bring on the costly lesson of such a practice: declining home values and a declining community.

In summary, the sign of a well managed 55+ community is one that the only way you would know it is age restricted upon driving through it, visiting the clubhouse, and reading the news letter is if someone pointed this out. Then again, maybe 55+ communities simply have the same problems as all other HOA developments?



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Medi-Arb, It Can Work for Everyone

One of our top initiatives is worth repeating:

A hybrid of the familiar dispute resolution processes of mediation and arbitration is something referred to as *med-arb*. *Using a mediator with the empowerment (decision making authority) of an arbitrator. Simply put, the med-arb first individually sits down with the parties involved in the complaint to listen to their arguments. Next, the med-arb brings the parties together to conduct a mediation session. If the homeowner and HOA can't reach a formal agreement on all issues in the case, the med-arb will render a binding decision on the outstanding issues. Case closed and decisions are enforceable.*



In this process, a homeowner must first decide if they want to pursue their complaint in Court or using the med-arb. If the homeowner chooses to go to Court then the State HOA Office (or other designated State unit) and med-arb would not be involved in the

case. If the homeowner chooses to use the med-arb process they would file a complaint with the State and acknowledge giving up their right to argue the case in court. Filing fee of \$100 (or other amount stated in law). The State would record the complaint and review it for referral to the med-arb process. If the complaint is deemed eligible for med-arb, the homeowner would pay another fee of \$150 (or whatever the law would state) to cover the cost of the med-arb. Next, the parties in the complaint are brought together to mediate a binding solution. The costs of filing the complaint, payment for the med-arb session, and any legal costs would be assigned to one of the parties in the case, in full or in part, by the med-arb. This is similar to court in which a judge can require the loser of a case to pay all or part of the other parties legal expenses. We recommend a cap of no more than a few hundred dollars on the amount of legal fees for which an HOA, upon winning a case, can recover in med-arb. This will have the effect of prompting HOA's to settle (work out an agreement) with a homeowner instead of pushing dispute to med-arb and hoping to recover all legal costs.

Med-arb is exactly what we advocate: "mandatory, binding, out of court dispute resolution". It works, it's affordable, it's accessible to homeowners, it's impartial, it's timely, and results in a decision. This would preclude most HOA disputes from an expensive, drawn out, and sometimes out-of-control conflict between homeowners and their HOA. Most importantly it allows most HOA disputes to be resolved out of court (where they simply don't belong). The process is focused on settling disputes vs continual litigation. It is a process that is not a pay to play venue like our court system but a dispute resolution process accessible and

affordable to all.

Note, this process is fully funded by the litigants via filing fees and paying for professional med-arb's. No cost to the taxpayer. In fact, by relieving the court system of caseload it can save tax dollars. The Colorado HOA Information Office and Resource Center already completes some of this work: they receive, read, and classify complaints. There are professional mediation organizations in Colorado that need only have mediators and/or arbiters to be trained on Colorado HOA legislation, law, and arbitration requirements. This process is applicable to 90% of complaints received by the State. Specifically, med-arb applies to non-compliance with HOA State law and HOA governing documents and/or cases with damages under a certain amount such as \$7,500 (or amount written into law). The med-arb process is not applicable to criminal violations.

Make the med-arb process part of Colorado HOA legislation and you make HOA legislation, that is currently weak on enforcement from the homeowner's perspective, very effective.



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