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HOA Legislation Passed, HOA Property Managers to be Licensed!

Thanks to all of you who participated in our write-in campaigns and supported our efforts.

See how your State Representatives Voted Vote for those who support HOA issues!

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 legislators and State offices.

Write the Colorado Information Office and Resource Center about your concerns with HOA governance and homeowner's rights. **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.



We are making progress, more to come!

The 2013 legislative session was a success for HOA homeowners. Four Bills were passed into law that lay the groundwork for immediate and future improvements in HOA governance. Visit our web site to access the full copies of each Bill , a summary of each Bill, and to view our 2014 legislative goals and objectives. Your participation in our email and telephone campaigns and attendance at HOA meetings were a definite factors in getting these Bills passed. You are urged to check out how your legislator voted on these Bills and if they voted against them ask them why? HOA issues are not partisan issues but homeowner issues!

Picture above: Signing of HB-1277 and HB 1276: Stan Hrinkevich, President, Colorado HOA Forum with Sen Morgan Carroll (left), sponsor and supporter of all HOA legislation passed into law this session, Governor Hickenlooper (seated), and Legislative Aide, Diane Rich, who helped on HOA issues this past session.

Our goals and objectives::

- ◆ Improve enforcement and penalty provisions in HOA law
- ◆ Implement 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
- ◆ Improve upon the regulating and licensing of 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 HOA homes
- ◆ Require certification from HOA home buyers that they have been provided a copy of the HOA's governing documents and latest financial statement and read them prior to closing a home sale
- ◆ Include as part of the HOA registration process a certification that HOA Board members have read their own HOA governing documents and information posted on the State's HOA Office's web site concerning State HOA law.

Have an HOA Problem: let us know and write the State HOA Office. Link to complaint form also on the Home Page of our web site.



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2013 HOA Legislation, will affect homeowners

Summary of Legislation 2013 Bills do provide HOA homeowners with expanded rights and improved governance. In particular, property managers will be licensed and regulated, a study will be completed by the State's HOA Office to determine a complaint resolution process (that is directed at an out of court venue), xeriscaping guidelines, and protections for homeowners against abusive HOA collection practices.

Improving Upon 2013 HOA Legislation

Our work for the next Colorado legislative session will include improving upon the 2013 legislation:

1. HOA Debt Collection Bill

House Bill 1276 (HB 1276) : include specific wording in this law to preclude/limit the adding on of assessment, interest, and/or administrative charges to debt owed an HOA during the repayment period established between the homeowner and HOA.

2. Licensing HOA Property Managers

House Bill 1277 (HB 1277) : Remove the endorsement of the CAI courses specifically mentioned in this law to promote competition in educational offerings; include definitive language that includes penalties for community managers (CAM) that collaborate with HOA Boards to violate HOA law or when a CAM is aware of an Board not complying with their own governing documents/HOA law and they don't report it to DORA. Include a directive that DORA work with Colorado Community Colleges to develop an educational program to meet CAM educational requirements.

3. Registering HOA's and Identifying an Optimal Dispute Resolution Process House Bill 1134 (HB 1134)

Include as part of the HOA registration process a certification from HOA Boards that they read their own governing documents

and State HOA law. Expand the role of the State's HOA Office in homeowner dispute resolution to model that of the Virginia plan.

Include in this Bill an out of court binding dispute resolution process for homeowner complaints to be administered by the State's HOA Office. [visit our web site](#) for an in-depth discussion on how this would work and works in Virginia. This is the missing link for homeowners in filing and resolving their complaints with HOA's. Note: mandatory mediation is not the answer: it mostly adds cost, time, process and more uncertainty in gaining decisions.

HOA Turnover Process: from developer to residents

Turnover is the transition of control of the association from the developer (Declarant) to homeowners. During turnover, homeowner board members are elected at various percentage of lot sales as defined in CCIOA and/or the developer's declaration resulting in the transition of governance from developer to homeowners.

After transition occurs, association members often make the sobering discovery that things are not what they seemed to be while the developer was still in control. Contracts entered into by the developer may not have been true arms-length transactions; assessment amounts might have been kept artificially low; monies may be missing from certain accounts; and the construction may not be as sound as one would have hoped.

There are guidelines and checklists the new Board should use during the "turnover" process (see below list of articles). It is critical that the new Board reviews all financial records, contractual agreements, and other arrangements they inherit. Don't assume anything.

After the turnover, the **HOA Board members may terminate any existing management company, HOA lawyer, or accountant upon proper notice.** Don't assume you have to retain these folks. Base such decisions on findings of past performance, inter-



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views, and financial and contractual documents.

Obviously legal counsel is required with the turnover process.

Articles of interest:

Colorado specific:

[Comprehensive article from legal source CCIOA \(State Law\)](#)

General articles:

[Developer Turnover Checklist](#)
[General Article on Turnover](#)

[Court rules developer responsible for roads and infrastructure and implied warranties after turnover](#)

We'll be requesting the State HOA Office to publish information on this topic on their web site to empower homeowners during the turnover process.

HOA's Need to Respond to Marijuana Usage in Condominiums

Increasingly, our organization is receiving inquiries about the use of marijuana in condominium complexes. The inquiries involve the odor of marijuana in the hallways and throughout the building. Since "pot" has become legal in Colorado it is now out in the open. The odor emitted from a "joint" can be offensive, intrusive, and affect the quality of life of others (similar to cigarette smoke). This is particularly the case in condominiums or any high-rise in which smoking in the hallways and or in one's own dwelling can result in the smoke and odor entering the residence of all on the same floor and/or throughout the building. Note, this is not a moral argument on the use of marijuana but addressing a real problem to allow both user and non-user to co-exist in harmony. HOA's seem to have run into a road block in addressing this problem but are they powerless?

HOA's can't ban the use of pot in one's own dwelling as it is a legal substance and the practice is conducted within private proper-

ty. However, similar to HOA's setting rules for what color a home can be painted, how big and where an American flag is hung, designating non-smoking areas, or how, when, and where political signs are displayed an HOA can similarly make and enforce rules to mitigate the problems with marijuana smoke and odor.

These are all restrictions on legal activities but don't prohibit the activities. So, an HOA could prohibit smoking weed in common use areas such as hallways and building lobbies and entranceways. Furthermore, rules can be implemented to prevent/mitigate pot smoke from being emitted from a condo into the hallways. The HOA can direct residents to seal the door to stop leakage into the hallways and/or vent the living unit (open the patio door for example) during marijuana use. This can all be done by claiming that the practice by the homeowner is a nuisance and/or health problem to other residents which under most HOA governing documents allows the HOA to warn and/or penalize the homeowner if the infraction continues.

HOA's should utilize existing governing documents and implied authority to address this problem as mentioned above. HOA's can also modify existing governing documents/by-laws to implement restrictions and controls that allow both users and non-users of marijuana to co-exist in harmony.

No doubt the odor and smoke from marijuana can be a problem in condominiums and high rise buildings. "Pot" is here to stay in Colorado and addressing usage problems in shared areas and condominium complexes during the initial legalization stage can mitigate future problems. HOA Boards and residents can take the lead in ensuring "pot" usage neither infringes upon the quality of life of others nor interferes with one's right to use weed.



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HOA Home Buying: read the governing documents

The best advice one can get prior to buying into an HOA community or when being contentious with your HOA Board is to read the HOA governing documents. Too often folks buy into HOA developments and don't read the governing documents and understand the controls, covenants, and restrictions. Current residents of HOA's should also take time to read their governing documents prior to protesting a fine or making demands to the HOA Board. You don't want to end up in court only to find out your by-laws don't support your argument. If you don't like a restriction and purposely violate it you should be fined. You can work to change the restriction but you knew about it when you moved into the HOA. Being a rebel with a covenant has its' (financial) consequences.

To mitigate this problem for home buyers we will be working towards legislation that mandates both the real estate agent and HOA homeowner certify that they were provided a copy of the HOA governing documents (and latest financial statement) and read them prior to closing on the purchase of their home.

[Check out this article on HOA home buyer awareness](#)

Then there is the problem when a dysfunctional HOA Board and/or a property management company ignore homeowner's rights and/or don't comply with their own governing documents or State law. HOA law and governing documents can be read and understood by the homeowner but the stark reality is that enforcement from the homeowner's perspective is very, very weak. Homeowners that demand accountability from their HOA Board are stuck with our litigious, costly, time consuming court system for enforcement. This method to enforce homeowner's rights is mostly out of reach for most homeowners. The HOA Board and their lawyers, on the other hand, don't hesitate to go to court to defend their actions using your HOA dollars. HOA lawyers are always compensated win or lose. Even when an HOA Board is found to be in non-compliance

or otherwise wrong there is no penalty to Board members or the HOA other than backing off on their demands and complying with the law. So consumer education is advocated for homeowners and so is a workable means for enforcement for both homeowner and HOA.

This is why we continue to preach [an affordable out of court binding dispute resolution process](#) that would allow HOA homeowners an accessible and affordable venue to resolve disputes and argue their HOA rights out of court. Until Colorado law is changed, buyer be aware.

HOA buying tips in next issue.

Vote for those who vote for your HOA homeowner's rights

Vvote for those who represent the homeowner and not the special interests that thwart HOA legislative reform. What issue can be more important to a voter than protecting their homeowner rights and protecting against abuse by HOA Boards and property management companies. [You can check out how your State representative voted on HOA legislation via our web site.](#) Ask your representative why they voted against any of these recently approved HOA's!

HOA Town Meeting Anticipated in October 2013

Last year the HOA Town Hall Meeting hosted by several State representatives was an overwhelming success and contributed towards the passage of HOA legislation. We will be promoting this effort again. The date, time, and place is yet to be determined but we will keep everyone apprised on the specifics of the event and ask for your help to publicize this most important activity.



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HOA stories delivered to your email address via Google

If you enjoy reading about HOA's throughout the country you can get this information delivered to your email address via Google Alerts. You would be amazed at the HOA stories reported in media that reflect your concerns and can even provide you with valuable information on resolving your disputes. You will find out that HOA issues are covered much more comprehensively and frequently in other parts of the country vs Colorado.

You can sign up for Google Alerts at: <http://www.google.com/alerts> or simply go to <http://www.google.com/alerts> and set up your account.

Some suggested key words when setting up your alerts: HOA, HOA law, HOA Colorado, and Homeowners Association.

Attend a State HOA Office Outreach Meeting

The Colorado State HOA Information Office and Resource Center conducts community outreach programs to educate homeowners on HOA issues. [The schedule is posted on their web site.](#) and our home page: www.coloradohoaforum.com

Our organization works to ensure HOA governing documents and State law can be enforced from the homeowner's perspective. We complete our goals through HOA legislative reform.

HOA law and governing documents are very weak from the homeowner's perspective due to the lack of an enforcement system that is affordable and accessible.

HOA governance can be improved by implementing an [out of court binding dispute resolution process.](#)



State HOA Office a one-stop-shopping web site for HOA information

The Colorado HOA Information Office and Resource Center has improved its' [web site](#) and is close to becoming a one-stop shopping HOA information web site/portal. You can obtain general advice on how to handle HOA disputes, buying a home in an HOA, how to file an HOA complaint with the State, copies of HOA law, how to register your HOA, how to conduct HOA meetings, copies of the State's annual HOA report, and more. We hope this office expands its authority and responsibilities in the future through legislation but for now it is a valuable resource for all HOA homeowners.

[Web site](#)

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[Previous Issues of Our Newsletters](#)





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Special Assessments

So you don't like the idea of an HOA's authority to make special assessments. Occasionally, HOA's need to raise funds for one-time capital investments and homeowners must pay. These special assessments can include funding for maintenance or repairs such as a new roof on a building, road repairs, etc.

Low monthly HOA fees or inadequate reserve funds have the potential to lead homeowners into a situation where a special assessment is necessary to cover large expenses. Unfortunately, financial mismanagement can also lead to special assessments. Generally, unless otherwise stated/limited in an HOA's governing documents, homeowners don't have to approve the special assessment. Your Board is empowered with this authority.

Home buyers considering moving into an HOA must be aware of any planned special assessments and ongoing special assessments. These amounts can be significant. Ask your realtor to inquire on this topic and you may also benefit by contacting the HOA Board for a response in writing.

Here's an example of a special assessment that caught a homeowner by surprise. The homeowner bought a home in an HOA for a very good price during the recent downturn in the real estate market: about \$30,000 less than prices of the previous year. A year later, the HOA decided all roofs on all homes needed to be replaced at a cost of \$22,000 per household. Very little discussion with homeowners and approved by the Board. Those not coming up with the cost in cash or financing would be subject to penalties, fines, and interest charges and the work would proceed on their home. So that bargain priced home turned into not only an average deal but an additional and unanticipated burden to the homeowner.

Welcome to the world of HOA special assessments and buyers need to be aware.

Media Coverage and You

The media does a fair job at best covering HOA issues. We have been occasionally successful with the Denver Post hardcopy edition and their local Your Hub print and on-line editions. Local television has provided some very sporadic coverage. Local radio, in particular KHOW and the Tom Martino Trouble Shooter show, has been generous and supportive of our work.

HOA issues that effect nearly sixty percent of Coloradans who live under HOA governance should be e news item on a regular basis. Almost all new developments in Colorado are under some form of HOA governance and home buyers need to be aware of what an HOA can offer and what they must give up in homeowner rights to gain the benefits of an HOA community. They must have some understanding of HOA law and the living environment and the media can play a role in educating the consumer.

When HOA stories are covered we too often get a perspective on a story that is from lawyers, trade groups, and the real estate industry and not from the perspective of the HOA homeowner.

With our many members there surely must be some that have contacts with the Colorado media. Please contact us if you have some suggestions on working with the media to inform the public on HOA issues.

Have an HOA Problem: let us know and write the [State HOA Office](#). Link to complaint form also on the [Home Page of our web site](#).

[New Survey: Voting and HOA Issues](#)



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Rental restrictions can mitigate problems with real estate speculators and property maintenance

Can an HOA impose rental restrictions? The answer is yes. Now, why impose rental restrictions?

First, the restriction may have to grandfather-in existing rentals but can preclude current homeowners from future renting. This will require a change in the HOA's governing documents through a homeowner vote.

The recent down trend in home values and increase in foreclosures has brought real estate speculators into HOA housing developments. They buy low and rent the property until the home price increases and then sell or continue with profitable rentals. Poor maintenance of the property can result and be an eye sore.. Delinquent payment of HOA dues can also happen. Many of these properties can remain vacant which is also poorly reflecting upon the community. Speculators and transient residents have no interest in the long-term needs of the community or managing day to day operations. Enforcing governing documents with absentee landlords is difficult. Rentals in HOA communities don't contribute to home value increases but just the opposite.

Limiting the ability of a homeowner to rent does infringe upon their property rights but negative affects of rentals upon all others in the community must also be considered. Not all rentals or renters are irresponsible but real estate speculators and their rental practices can be detrimental to communities. Therefore, precluding rentals or the number of rentals in a community at any given time is something for HOA's to consider. This is prevention more than restriction.

Before considering rental restrictions the HOA should conduct a public meeting at which homeowners can express their concerns, support, or rejection of the idea. A homeowner's vote on the issue will be re-

quired. If a rental restriction is implemented it is incumbent upon realtors to be aware of this provision and HOA Boards should be aggressive in assuring the realtor is aware of the rental restriction.

Pay fines and HOA dues on time

If you are fined by your HOA for a violation you have a right to protest but we suggest you pay the fine on time (and keep your HOA dues current) during your dispute resolution to avoid additional fees, assessment, and administrative charges. That \$50 -100 fine can quickly turn into hundreds of dollars. Consider the cost benefit of fighting any fine and try not to let emotions rule over reason.

The HOA and homeowners both know that the court system is the only means to resolve these confrontational disputes (mediation exists in the law but see link below for our comments on this mostly unworkable process) and this favors the HOA Board with their unlimited funds, HOA lawyers, and hostile court venues. Until we homeowners gain an [out of court binding dispute resolution process as discussed on our web site](#) it is generally advised that homeowners pay fines/dues on time, comply with HOA requests, keep current with HOA dues, and [stay out of court](#). The cost benefit of fighting most HOA disputes in court is not in favor of the homeowner. Again, even if you go to court, pay fines on time to avoid abusive fees and add-on charges. Pick you fights carefully and have your argument supported by your governing documents.

We are not conceding to and bowing to HOA Boards but want homeowners to avoid financial disaster and disappointment in our court system. Until the law is changed and these mostly simple disputes can be handled in an out of court venue we suggest avoiding a court case. Again, consider the cost benefit of going to court!