



# Colorado HOA Forum HOA Homeowner Advocates

Promoting Reform in HOA Governance



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Summer 2015

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**Americans with Disabilities Act and Fair Housing Act: HOA Issues**

Contact us at: [www.coloradohoaforum.com](http://www.coloradohoaforum.com) or email us at [coloradohoaforum@gmail.com](mailto:coloradohoaforum@gmail.com)

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

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. it's free.

## New Mexico Addresses Abusive HOA Transfer Fees

### HOA Manager Licensing: Heavy on Fees & Lite on Consumer Protections

### HOA Foreclosure Reform Needed in Colorado



\*\*\*\*File a CAM Complaint vs. HOA Complaint with DORA

### CAM Complaint Form User Guide



If you think your HOA is violating ADA and/or the Fair Housing Act, [file a property manager complaint with DORA](#). Need help, [contact us](#)./[use our Guide](#)

### Is your HOA Registered?

### Property Manager Licensing FAQ's

### Out of Court Binding Dispute Resolution (not Mediation) : Good Enough for Property Managers but Not Home Owners?

### Americans With Disabilities Act Articles and Web site references on our web site

### Understanding HOA Insurance

Organize an HOA Town Hall Meeting with your legislator: we will attend!

### Who or What is the Community Association Institute (CAI) and who do they represent?

The Colorado HOA Forum should not be used as a source for legal advice or a substitute for a lawyer when making legal decisions. We offer opinion and provide information on HOA issues based on our research and home owner's



Colorado Mountain Goats

HOA legislative reform is our process for improving upon HOA governance. Our number one goal is to implement a binding out of court dispute resolution process for use in resolving HOA complaints. A State directed study on HOA home owner dispute resolution recommends this process. Colorado will use a similar out of court process to resolve complaints under the new HOA property manager licensing program: **if good enough for property manager complaints why not for HOA home owner complaints?** Please read about this dispute resolution process on our web site and write your legislator asking them to sponsor legislation to implement the



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**Did you pay an HOA Transfer Fee on the sale or purchase of a home, file a complaint**

[HOA Complaint Form](#)

## Construction Defects Reform Should Focus on HOA Home Owner's Rights to Reduce HOA Law Suits

Past efforts to reform construction defects litigation/legislation (CDL) have failed. The aim of this legislation was to reduce the number and costs of legal cases pursued by HOA's. for construction defects. Such court cases, it is argued, hinder the building of affordable housing.

The legislation would've completed this by moving these cases from the court room to mandatory arbitration and most importantly require HOA home owner approval prior to using HOA funds on litigation. It would've precluded an HOA from changing mandatory arbitration clauses in their governing documents to allow for court cases. The efforts failed not because these are bad ideas or that this would be detrimental to home owners but due to well financed opposition from HOA trial lawyers and the Community Association Institute (CAI). They oppose allowing any non-Court solutions to settle disputes. These groups own enough of the legislature to kill this reform. The opposition also wants to block any efforts requiring home owners to vote on funding legal cases . Lawyers currently have easy access to HOA bank accounts without home owner approval and don't want this to change.

It is hoped this issue surfaces again but with focus on HOA home owner's rights to accomplish much of what CDL was intended to accomplish. Empowering/requiring home owner approval on the use of HOA funds in litigation would reduce the number of law suits and legal costs to HOAs. Next, drop the issue of requiring arbitration vs court action. Most HOAs never change their declarations that require arbitration, ALMOST NONE! This was empty argument to begin with. If an HOA would change the mandatory arbitration clause at the encouragement of HOA lawyers this would be countered by requiring home owner approval and most such law suits would not be funded by HOAs. Furthermore, a recent Colorado court ruling deemed restricting/precluding the ability of home owners to change the mandatory arbitration clause was legal making this argument irrelevant in any future initiatives. Thus, focusing on empowering home owners on the use of their funds in litigation is a WIN WIN for home owners and developers.

Finally, past efforts on CDL recognized the issue as one that would affect State HOA law. This is appropriate: change CCIOA. We will seek out legislative sponsors for a Bill to empower HOA home owners and end the easy access to HOA funds by lawyers.

## Who is the Blame for Lack of HOA Reform?

Considering that over half of Coloradans live under some form of HOA governance should made it easy to pass HOA legislative reform. Wrong. So who or what is the blame?

Begin with the Community Association Institute (CAI) that has dominated the thought process and information sources for our legislature on HOA issues decades. The CAI has written, modified, watered down, and/or killed every HOA legislative Bill over the past 20+ years. The problem is the CAI has nothing to do with representing HOA home owner's interests. Its' members are predominantly property managers and HOA lawyers. Thus implementing an out of court binding dispute resolution for HOA home owner disputes or ending the abusive and illegal HOA Transfer Fee becomes next to impossible when this well funded organization has pretty much a lock on gaining the attention of legislators for "what is best for HOA's". Their influence ensures that even when HOA legislation is passed, such as records access enforcement, debt collection, or property manager licensing the laws are very weak on enforcement and avoid any direct accountability for violators. In other words most HOA legislation/law is purposely more ornamental than enforceable from the home owners perspective.

Next blame our legislators who don't seek out the opinions of home owner's groups and continue to believe that the CAI is acting in the best interest of home owners.

The media is also complicit. Time and again they also report on HOA stories using the CAI as the sole source of information and also refer to them incorrectly as representing home owners.

Then we have the Department of Regulatory Agencies (DORA) that appears too close to CAI interests. The independence of this government agency for consumer advocacy and protection simply has shown bias favoring CAI interests. This can most recently be exhibited in their rule making for property manager licensing. The rules are heavy on endorsing the sale of CAI educational courses, allowing **Continued next page**



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**Did you pay an HOA Transfer Fee on the sale or purchase of a home, file a complaint**

**[HOA Complaint Form](#)**

## Who is the Blame for Lack of HOA Reform

the CAI to get involved in credentials approval and testing, and they participate in closed meetings with the CAI resulting in changes in the licensing legislation even before it has a history on implementation or no officially identified problems. The rules also conveniently avoid details on ethical and operational standards requested by home owner's groups that would make non-compliance identifiable and enforceable. This supports CAI interests.

Then there is the home owner. Most never email their legislator and continue to vote for representatives who vote against HOA Reform.

Thus plenty of blame to go around for the failure to gain effective HOA legislative reform.

## Abusing Rules on Service Animals



Legally, a service animal is just what it sounds like: an animal that provides a necessary service for its owner. The obvious examples would be seeing-eye dogs, or even dogs that assist the deaf. Few would argue the need for a service animal in these cases.

**However, the term "companion animal" can get a little — well — hairy.**

The legal definition of a companion animal is far less obvious and a very fine line to walk. Companion animals also provide therapeutic or medical benefit to the owner. But this assistance comes on a deeper, perhaps psychological or emotional level. Unfortunately, the less-obvious nature of companion animals can result in many people questioning their legitimacy.

...or abusing the system.

**It's an easy law to break, and dog cheats do. By strapping a vest or backpack that says "service animal" to their pet, anyone can go [Full Article](#)**

## Department of Justice Releases FAQs on Service Animals

Earlier this month, the Department of Justice released an 8 page guide to Frequently Asked Questions about Service Animals and the ADA. The [guide](#) was drafted to respond to the continuing questions received by the Department of Justice about how the Americans with Disabilities Act (ADA) applies to service animals. [Full Article](#)

## HOA Foreclosure Reform Needed

Homeowner's Association (HOA) legislative reform has proven to be extremely difficult in Colorado. Whether it's the recent HOA manager licensing law, HOA debt collection policy, or limiting HOA Transfer Fees, or requiring the justification of HOA fees the result has been watered down or "killed" Bills by interest groups such as the Community Association Institute (CAI) to the detriment of home owners.

Possibly one HOA issue can gain success in our legislature with support from home owner's groups and the CAI: HOA foreclosure reform. The abusive and not uncommon practice of HOA's foreclosing on properties for pennies on the dollar is financially devastating to home owners and financial institutions. Too often HOA's foreclose on a property and questionably, but legally, sell the home to speculators, investors, and sometimes privileged parties for a fraction of the home's value to gain payment of HOA debt. The buyer pays off all liens and obligations encumbered on the property, gains title to the property free and clear, and can then proceed to sell the home for fair market value. No requirement to for the HOA to pursue or accept fair market value offers. No net proceeds on the sale go to the bank to mitigate the loss on the defaulted loan nor will any proceeds be used to pay down the home owner's mortgage balance. [Full article](#)

## Nevada Passes HOA Foreclosure Reform Bill

Beginning October 1, 2015, lenders in Nevada will have a much-needed right to redeem properties sold at homeowners association (HOA) foreclosure sales for pennies on the dollar. Specifically, lenders and homeowners will have 60 days to redeem properties sold at HOA foreclosure sales—enabling lenders to recoup properties securing hefty deeds-of-trust. [Nevada Senate Bill 306, signed into law on May 28, 2015](#) by Governor Brian Sandoval, clarifies Nevada Revised Statute 116 *et seq.* (the "HOA Lien Statute") and limits an HOA's ability to extinguish a lender's interest in a property resulting from a borrower's delinquency in HOA assessments. [Full Article](#)





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### Marijuana in Your Condo

If you're the homeowner and you say it's okay, you can smoke two joints before you smoke two joints, then smoke two more. Colorado law says you're the king of that castle, and if the king wants to puff tuff, the king can puff tuff. Your balcony is also fair game for toking, thanks to a Denver City Council decision last year. Your garage and even your front porch are pro-pot zones (we've taken a shine to puffing a doobie while working on the car, ourselves). But keep in mind that your HOA can still set rules banning your ability to puff in your yard, on your porch or in any other space that could fall into the definition of "common area" for the complex. shared walls — **Full Article**

### Colorado Association of Realtors (CAR) Should Support HOA Legislative Reform

The Colorado Association of Realtors (CAR) and their members make their livelihood from serving home buyers and sellers. This organization has been virtually silent concerning HOA reform and to be honest quite ignorant on HOA issues. Our organization has written and called them for their support. Their most active response being silence and when they do respond they simple could care less or just totally misunderstand the need for HOA reform.

Take the HOA Transfer Fee. In an interview with the Denver Post they refused to comment. We interviewed them and they basically had all the facts wrong on the fee: who determined the amount and pocketed the fee, the justification and work performed for the fee, and not knowing the fee was not mandated by law. We must say that individual Realtors understand the fee is a scam but their leadership is to timid and comfortable to not make any waves over the fee.

We even asked CAR to support legislation mandating confirmation prior to completing the sale of a home in an HOA that the home buyer and Realtor read and understood HOA governing documents and reviewed the latest financial statement of the HOA. They at best wanted this to remain voluntary and we know how well that has worked

We ask CAR to step up and help those who put food on the plates of its' members and get involved in HOA legislative reform. Start with hosting a major HOA Town Hall Meeting and involve

other than the Community Association Institute (CAI). Invite those who are not part of the problem but part of the solution such as our organization.

### DORA to Begin to Accept CAM Complaints but Expect Little

The HOA Manager licensing law goes into effect July 1. Expect little reform for HOA home owners. Property managers (PM) will be greeted with new fees, higher operating costs, and costly licensing requirements. This Law illustrates what happens when the industry trade group for PMs (Community Association Institute (CAI)) writes the law and uses it to promote its' financial interests.

The law increases PM business insurance costs, requires recurring license renewal and educational costs, imposes new background check and testing fees carry out requested actions of a Board that are in non-compliance with the law or an HOAs governing documents ..... **Full Article**

### DORA Needs to Let Public Know HOA Office and Complaint Processes Exist

You heard about the grand party that no one attended because the invitations were never sent out. The State HOA Office has been existence now for several years and you can bet your HOA home on it that it is still a well kept secret. Same with the HOA home owner complaint and now the HOA property manager complaint processes. The State Office does have an outreach program but that is also a somewhat guarded secret and known only if one visits the virtually unknown State HOA web site. DORA collects money from HOA's for registration and now a bundle from property managers (aka CAMs). We suggest DORA work with newsprint and other media to let the public know about the State HOA Office's services and live up to its' motto: **Consumer protection is our mission**

[HOA Complaint Form](#)



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[\*\*HOA Complaint Form\*\*](#)

### **If you paid an HOA Transfer Fee after July 1, file a Complaint with DORA**

The below email was sent to all our members:

The HOA Manager licensing law requires disclosure of fees imposed by property management companies on home owners to be in their contracts with the HOA. If you know of anyone who has recently (after July 1, 2015) sold or bought into an HOA and paid an HOA Transfer Fee (this can be identified as a one liner on the closing documents) let us know. These home owners might be eligible for a refund and the management company fined. We will help in filing their complaint with DORA to pursue this issue.



The HOA Manager licensing rules are very weak for home owners and purposely left out specifics and justifications regarding fees imposed by management companies on home owners. However, there is still room for filing complaints and requiring HOA Boards and management companies to justify the imposition of the HOA Transfer Fees in HOA contracts and governing documents. Additionally, your HOA Board may also be required to inform home owners if they endorse such fees and to change the HOA governing documents/declaration to indicate the Transfer Fee is a financial obligation of the home owner upon the sale of their home (which may require a vote of home owners).

When someone buys a home in an HOA they are to be apprised of all financial obligations to the HOA as a home owner. This includes HOA dues and special assessments. The HOA Transfer Fee is rarely if ever disclosed as a legal obligation and therefore the property management company (and HOA) should be precluded from assessing this fee. The new licensing law precludes assessing fees unless it is in their contract with the HOA and/or supported by the HOA governing documents.

Filing a complaint costs zero and we will help as needed. [\*\*Use our Guide\*\*](#)

### **HOA's Across USA**

**Note: HOA laws vary by State**

#### **Use your air conditioner and you'll be fined**

#### **California Court Upholds HOA's Short Term Rental Rules**

#### **Can an HOA Foreclose?**

#### **Is alcohol allowed at Board Meetings and must the property manager be present at HOA Meetings?**

#### **Years after vacating their homes, borrowers still can be stuck with HOA fees**

#### **HOA forces homeowner to rip out xeriscaping**

#### **HOA Boards must follow own collection policy are consequences can be serious**

#### **CAM illegally rents owner's property**

#### **Can home owner pay assessment/fine under protest**

#### **Common area improvements not individual's burden**

### **CAM Complaint User Guide to be Issued**

We have reviewed DORA's on-line application for filing CAM (property manager) complaints. Ask DORA and they will tell you it is a most user friendly application. We don't agree and sent them an email requesting changes. Hey, what about using email to submit complaints or the ability to download the complaint form? How about indicating official documents in support of the complaint can be U.S. mailed and a mailing address? You can do all this with the HOA home owner complaint process why not for CAM complaints?

[\*\*Our user guide\*\*](#) will help home owners file their complaints.



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## Why CAM Complaint vs the HOA Complaint

Make no mistake, the HOA Manager Licensing law and rules were heavily impacted by the very folks it is supposed to regulate. That being said the law does require CAM (Community Association Managers aka property managers) to follow State HOA law. It requires they not be complicit in breaking State HOA. If they know State HOA law is being broken, if they are advising a Board to break the law, or if they carry out or are a part of breaking the law they are in violation of the licensing law and related rules. The law requires DORA to investigate complaints and take action and disciplinary action as applicable.

Complaints with the State HOA Office, although important in surfacing HOA home owner discontent and violations of the law, don't involve any investigative or disciplinary actions by the this Office. The complaint begins and ends with your filing of the complaint. The State HOA Office has a job description that limits its' responsibilities to administratively handling complaints, serving as an information resource on HOA law, and completing an annual report on the number and type of HOA complaints. This Office is beneficial to those few in the public that are aware of it. However, it has NO investigative and enforcement authority. Unfortunately and by deliberate design and influence from the CAI and its' legislative supporters, the Office for now will remain as is.

Most HOA complaints do have something to do with CAM involvement and CAM violation of the law/licensing rules. If you are not resolving your HOA Board issue in court use the CAM complaint process. This will cost nothing and you will get your complaint reviewed and investigated and hopefully some accountability and disciplinary action if your complaint is valid.

Supporting a CAM complaint begins with documenting your actions and the violation. Be sure to address all correspondence, inquires, and notifications leading up to and supporting your complaint to both the HOA and CAM and if applicable the HOA lawyer. You want to make sure the CAM is aware of your problem. Don't get personal and don't base your

complaint on you think but what you know. Always read your HOA governing documents and the HOA's contract with the CAM to identify breaches in CAM responsibilities and other information to support your complaints. Research the law to support your complaint. Our [CAM Complaint User Guide](#) will help save you time and provide some legal references to support your complaint. Common complaints are addressed in the guide such as records access, election irregularities, assessing HOA Transfer Fees, HOA meeting irregularities, and HOAs in disrepair.

In general and quoted in the HOA Manager law is an important clause that can support nearly all CAM complaints: "TAKING REASONABLE STEPS TO ENSURE THAT VIOLATIONS OF STATUTES AND THE DIRECTOR RULES DO NOT OCCUR OR REOCCUR". This makes addressing all correspondence to the Boar AND the CAM very important. Additional excerpts from HOA laws are in the Guide.

We will continue to fight for legislation that would empower the State HOA Office with investigative and disciplinary authority. In particular, if this Office was empowered to investigate HOA complaints with an out of court binding dispute resolution process you would witness HOA laws becoming highly effective vs mostly ornamental. Until then don't just sit back and complain, file a CAM complaint.

## Can HOA Report Late Dues to Credit Bureau

Q: I am an HOA board member of a development containing 143 homes. More than a quarter of our owners are delinquent in paying their HOA assessments. Is it possible for the HOA to report these delinquent debts to a credit bureau?

A: While it might sound attractive for your HOA to report the delinquent debts to one or more of the consumer-credit reporting agencies (Equifax, Experian, and TransUnion) as a collection tool, your HOA would have to be a member of the bureau(s) to do so.

Only members can report information on consumer debts and obtain credit reports from these agencies. [Full Article](#)



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### **DORA redesigns and improves web site but tells no one, asks for no public input, and worst of all we can't find what we are looking for!**

Our organization has begun to receive inquiries about malfunctioning links on our web site to the DORA web site. Our members indicated our links were not taking them to the intended information at DORA. **They were right.** Appears DORA redesigned their web site invalidating links from our web site to theirs. Keep in mind this same problem of DORA invalidating web addresses and redirecting incoming inquiries to their web site to their **generic web page** affects anyone, anywhere that has links to the DORA web site on HOA issues. Links to the previously helpful DORA HOA home page, HOA law, HOA registration, etc. no longer work as intended. Therefore, once users from our site and others reach the new helpful front door (home page) to the DORA web site they are on a mission of "Where's Waldo" to locate what they want.

This was all done by the folks at DORA without apprising the public, without public input as to whether their "improvements" were understood and usable, and without providing users information on how to find the previously useful web pages and information. What we also found out was the previously useful information was no longer available in the easy to use format. GONE!

We asked DORA to provide us direction on how to find information on their web site that we have found helpful for the past three years. We also asked for changes to their "helpful" redesign to aid the public in locating information on their web site. There response was predictable and to sum it up, they are right, we are wrong. This is the same response we received when we asked for redesign changes with the CAM complaint form. In fact mostly the same type of response to our requests when we asked for specifics in CAM licensing rules.

DORA's "helpful" redesign has cost our organization a lot of time and effort and we still can't find links to what we want. When we did find some links to replace the previous helpful links, the DORA web site continued to redirect our access to



their spiffy, new and helpful HOME page.

DORA also indicated they couldn't fix the problems on their web site. They told us the complaint form was fine and that the vendor had control of all web site pages. Wrong! DORA approved the vendor who developed the web site and the vendor works for DORA and not the opposite! DORA approved the new design, approved invalidating previous web pages and what appears to be missing and non-accessible information, and approved the implementation plan that included doing this without apprising anyone. This is not a way to operate a public information web site!

Seems we are now left with a DORA HOA Office that almost no one in the public knows about and now we have HOA information on the DORA web site we can't find. Just remember their mission statement: **Consumer protection is our mission?** Finally our advice to DORA, "if it ain't broken don't fix it"