

Colorado HOA Forum HOA Homeowner Advocates

Promoting Reform in HOA Governance

Colorado Blue Columbine



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Fall 2019

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

Join our effort by signing up on our web site. Our 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 and legislators 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.

Before you pursue any HOA complaint, read your HOA governing documents to determine "what is" as opposed to what you "want things to be".



Brochures:



Visit our web site, guides on HOA home buying, governance, finances, maintenance & ownership. Free to our members

FEATURED

Companies offer HOA Transfer Fees Services for \$50-70
HOA Property Management Companies charge \$150-300 to over \$1,000

HOA Legislation 2019: property manager licensing law vetoed by Governor (HB 1212) and Our Comments to make this law effective

HOA home owners in mobile home parks/manufactured home communities get out of court dispute resolution process (HB 19-1309): why not HOAs?

Attempts Already Underway to Undermine HOA Office Sunset Review and CAM Licensing Reform

✓ State HOA Office Sunset Review: recommends an out of court dispute resolution process within Office, requires legislative approval

Visit Our Redesigned Web Site offer suggestions for topics

View our comprehensive library of HOA Home Buying, Maintenance, Governance, Finance, and Ownership Guides

Should HOA Board Members Require Certification?

HOA Transfer Fee Dirty Dozen

Explanation of: Articles of Incorporation, Declaration, CCRs, by-laws

✓ State HOA Data Repository can save home owners millions-cost little

Conflict of Interest and Board Members: a brief



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Service Animal Restrictions: proceed with caution

Even though most private residential Associations are not subject to the [Americans with Disabilities Act](#) (the “ADA”), the [Fair Housing Act](#) (the “FHA”) still applies and protects owners who have service animals. In some cases, the Association has the right to ask the owner for documentation supporting the need for a service animal, but not always...and the case below illustrates how pressing for documentation when the Association is not entitled to it can end up being quite costly for the Association.



In a 2019 case, a homeowner who had a disability that affected her mobility, and experienced acute pain attacks that required her use of a walker, attempted to bring her service dog, a Chihuahua, along with her to the HOA clubhouse. The HOA had a rule that stated “Except for handicap assistance, animals are prohibited in the clubhouse,” and Board members and the property manager barred the owner’s entrance to the clubhouse with her service dog because they asked her for “certification” papers for the service dog, and she did not provide them. Several similar clubhouse access attempts were made by the homeowner, each time with the same result. The HOA issued fines against the owner, and other homeowners took it upon themselves to write anonymous emails to the owner threatening that they should leave the community, and even threatening to kill the dog. The owner eventually moved out of the community (although she still owned the home) because of the harassing behavior of the Board and other neighbors. The owner filed suit against the Association and the property management company, seeking damages under the ADA and FHA for failure to reasonably accommodate her disability. [Link to our web](#)

[Colorado Common Interest Ownership Act](#) (check for revisions on [State Web Site](#))
A comprehensive and definitive law for HOA governance: [modified by subsequent Bills](#)

[Visit our site to view our comprehensive library of HOA Home Buying, Maintenance, Governance and Ownership Guides](#)

HOA Transfer Fees \$50, NOT \$350– 1,000: this fee exposed, know your options

The HOA (homeowners association) home sale transfer fee costs home owners upwards of \$10 million a year and can range from \$200 to over \$1,000. The fee doesn’t benefit HOAs, the amount is set by the HOA Property Management Company (PMC) that retains the fee, it is not legally required by law, can prevent FHA loan financing, and is never documented on a receipt to the payee on what was completed or when with a line item cost (unlike any other invoice you would pay). It’s just “pay it or your home will not be sold.” Worse yet, the “supposed” transfer fee services have already been paid for with HOA dues resulting in duplicate billing to the home seller! [Read full article](#)

Barking and Vicious Dogs: Revise Covenants

Our organization continues to receive inquiries concerning dogs: barking, vicious, loose, dog runs, numbers of dogs, etc. If your neighborhood has turned into a Pet Smart with no defined pet owner responsibilities maybe it’s time to modify your governing documents. Folks complain about dog waste, no peace and quiet with dog barking, pushing walkways, dog runs and patios to never ending dog walkers others off and dogs left in unattended on bark endlessly.



Home and pet owners should work together to provide for a safe, secure, clean, relative peace and quiet and aesthetically looking neighborhood. Modify your governing documents to restrict or ban dog runs and that if permissible they are clean and maintained or fines ensue, annoying barking and loose dogs and dog waste should be addressed with fines. The size and number of dogs should be restricted to be compatible with yard size and living space for the animal. Rules on unattended dogs. All can live together but that segment of pet owners who live in a bubble and disrespect others ruin it for the rest of our four legged friends and responsible owners

[HOA \\$540 fine turns into \\$10,000. It can happen and blame HOA lawyers who push court cases and our and court system](#)

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 personal experiences.



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Condominium Party Wall Agreements

What's a "Party Wall Agreement" and what does it mean for me as a home buyer if the property I'm buying requires I sign one? As a real estate broker in Stapleton I've had this question pop up on multiple occasions with home buyers because several of our local builders use these agreements. Here's a quick post to explain it and provide you with a real world example of one such agreement.

Before I get into the details I should say that I'm not an attorney and because Party Wall Agreements aren't typically Colorado-approved real estate forms I have to be careful not to provide legal advice. So my "CYA" disclaimer is that this is just my personal two cents, you can and should have an attorney look at your specific Party Wall Agreement before signing it.

So what is a Party Wall Agreement ("PWA")? [Read full article](#)

Can HOA Declare Bankruptcy?

A member raises his hand and asks the inevitable question—if the association is too broke to pay its bills, why not simply declare bankruptcy? Hold the creditors at bay until the economy picks up? No one on the board has a good answer. Why? Because it almost never happens. Here are the practical and legal reasons why. No Big Creditors

The typical association has two principal financial obligations: its regular monthly operating expenses and contributions to its reserve fund for future maintenance and repairs. Vendors who provide regular services to a community association are typically paid monthly or are on limited annual or monthly contracts. This would include the landscaper, the pool service, management and similar [Read full article](#)

[Your suggestions on issues to be considered by the Disabled when buying a home in an HOA are appreciated](#)

Your HOA violating ADA or the Fair Housing Act? Need help, [contact us](#)
[ADA page on our web site](#)



HOA Financial Internal Controls

By nature, homeowners associations are particularly vulnerable to being financially damaged by errors that are made by the volunteer members and property managers who perform various functions for the association, and by deliberate acts of fraud and embezzlement. To protect against and minimize the risk of suffering financial losses due to such acts, associations should have established internal financial controls that mandate the manner in which business involving the association's finances is conducted.

Basic controls that are very easy to implement include:

- Segregation of Duties
- Controls over the Handling of Funds
- Regular Director Reviews
- Proper Financial Statements
- Segregation of Duties



No one person should ever have access to all of the different aspects of the association's finances, and no one person should be vested with the responsibilities of the differing financial duties or the responsibilities of the board of directors acting collectively.

Segregating financial responsibilities will facilitate detecting innocent errors and will make it more difficult for one person to commit fraud or embezzle funds from the association. Typical financial responsibilities within a homeowners association that should be segregated and/or performed by the board collectively include: (i) the approval of transactions such as the selection of vendors, entering into contracts, and authorizing payments and credits; (ii) the depositing and withdrawing of association funds and the posting of association financial transactions; (iii) the approval of payments to employees and vendors and the writing of checks for the approved payments; [Full Article](#)
[Article on this topic: fraud-embezzlement](#)

[A Manager's Guide to the Colorado Revised Nonprofit Corporation Act & Other Statutes: use as a general guide to answer issues on HOA governance](#)

[HOA home buying, maintenance, governance and ownership guides, free to our members.](#)



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Smoking Ban in Condominiums?

A common conflict that occurs within homeowners associations, and in particular those that govern condominiums, relates to complaints by individuals who are affected by secondhand smoke resulting from smoking by a resident or guest that is in a neighboring unit or in close proximity. Dealing with such conflicts involves a balancing of rights between the parties. While the offending party that is creating the secondhand smoke will argue that he or she has a right to smoke, the party complaining of the effects of the secondhand smoke will argue that he or she has a right to the quiet enjoyment of their own units and should not have to put up with secondhand smoke that permeates into their unit. [Full Article](#)

Conflict of Interest and Boards: a brief

Q: When will a conflicting interest transaction be upheld?

A: Conflicting interest transactions are not void or voidable, cannot be enjoined or set aside, or give rise to an award of damages or other sanctions in a proceeding by a member solely because the conflicting interest transaction involves an interested director who is present at or participates in the meeting that authorized, approves or ratifies the conflicting interest transaction or solely because the director's vote is counted if: Material facts as to directors relationship or interest are disclosed or known to board and board in good faith authorizes, approves or ratifies the transaction by a majority of the disinterested directors (even if disinterested directors are less than a quorum); or Material facts are known to members entitled to vote and members specifically authorize, approve or ratify in good faith; or Conflicting interest transaction is fair to the association.

No loans shall be made by association to directors or officers.)

Also note in Colorado, even if you identify a conflict of interest what can you do about it? HOA laws require court action and thus are basically administrative until an out of court dispute resolution process is implemented in the State's HOA Office



Pay the Fine or Else: limited options

Your HOA directs you to take down the bird feeders, slaps you with a \$50 fine, no warning and not a violation of governing documents. HOA directs you to modify landscaping on common property but you object as it is their property and violation has been there for years, you were not notified of the problem when you purchased your home: \$400 fine. Awning on your patio, HOA directs you to take down, has been up for six years and previously approved by the HOA: \$100 fine. You've heard about this happening to others but it could be you. If you want to fight the HOA you must go to court. Oh yes, you could hire a mediator if all parties agreed to TRY and work out a solution, that will cost \$300-500+. If no agreement you just wasted a good deal of money. [Read full article](#)



DO THIS FIRST

Before you pursue any HOA complaint read your HOA governing documents for "what is" as opposed to what you "want things to be". Then understand your only viable means for dispute resolution is our pay-to-play court system: it is your limited resources against the unlimited legal and financial resources of the HOA! Avoid court and don't let your emotions over an issue empty your bank account on legal fees: weigh the cost benefit!

[A Manager's Guide to the Colorado Revised Nonprofit Corporation Act & Other Statutes; a comprehensive guide on governance, your governing documents may be more definitive or restric-](#)



[Colorado HOA State Laws](#)



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Restating Governing Documents

HOAs are encouraged to ensure their governing documents and rules are up to date, current, correct, comply with State HOA laws and easy to read. HOAs that have existed for at least ten years most likely have their governing documents conflicting with recent State laws. In addition, there may have been changes to the official governing documents approved by home owners that are most likely in separate documents and can add to confusion and misunderstandings. The task to consolidate and restate is more complex than it seems. [Read more](#)

[60% HOA Complaints Remain Unresolved:](#)
An independent study on HOA Governance

HOA Transfer Fee: you do all the work, still charged by management company

HOA home sales transfer fees are claimed to be charged by HOA property management companies (PMC) to get reimbursed for expenses they incur that are extraordinary in the sale of a home. In particular, they must change names in directories due to divorce, death, kids coming and going; change bank accounts for HOA dues payments; issue new security codes; provide new owners with a newsletter and parking pass, etc. all of which are ordinary and paid for via HOA dues and result in NO additional costs due to the sale of a home. The other two contended components of this fee "costly" to management companies: 1) providing the home buyer and Title company with copies of HOA governing documents mandated by the State. [Read more](#)



HOA Transfer Fee Seminar Revealing

You've heard us lobby about reining in the abusive, excessive and unjustified HOA Home Sale Transfer Fee. On Oct 1, 2019 we conducted a seminar on this fee to reveal why this fee is excessive in cost and has no relationship to the "supposed" costs incurred by the property management company (PMC) when a home is sold. We further indicated that there are companies that provide the Transfer Fee (TF) services for Read full article [full article](#)

Condominium Parking Spaces: How they are created, owned, transferred and insured

The Declaration

A condominium is described as "the concept of ownership of a single unit of air space within a multiple dwelling complex, together with joint ownership of the amenities (pool, recreation center, greenbelts, etc.) and common areas of the structures and land among all unit owners."

The condominium is governed by the Declaration of Covenants, Conditions, and Restrictions or Condominium Declaration. The Declaration is paramount in importance partly because of its contents, which may include provisions for assessments, rights to use of the common area or common elements both general and limited, development rights, special declarant rights, maintenance, easements, insurance, and other matters that bind the land and set forth rights and obligations of the owners and users of units or other property within the community.

General and limited common elements

The Declaration further sets forth the difference between a General Common Element and a Limited Common Element. [Read full article](#)

Your HOA violating ADA or the Fair Housing Act? Need help, [contact us](#)
[ADA page on our web site](#)



[HOA home buying guides and HOA home owner maintenance responsibilities brochures](#)