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# Owner Rights and Responsibilities in Colorado Common Interest Communities

## Introduction – The Importance of Education/Orientation

Owners and residents can maximize the benefits of living in or owning property in a common interest community or HOA by better understanding the history, purpose, and function of their owner association.

## How to Become Oriented to The HOA

There are many ways to become oriented to the HOA:

1. read and review the governing documents – declaration, bylaws, articles of incorporation, rules, governance policies and plat or map
2. read the information distributed by the HOA
3. ask questions of the HOA manager
4. ask questions of the HOA board of directors
5. attend a few meetings of the board of directors
6. attend the annual meeting of the members, and determine what candidate to vote onto the board of directors
7. volunteer and join a committee
8. attend an owner or resident orientation/education program
9. obtain, read and review publications on common interest communities (from the Community Associations Institute (CAI) at [www.caionline.org](http://www.caionline.org))
10. check out publications on HOAs from the local public library
11. attend an educational program offered by local government or the Rocky Mountain Chapter of CAI ([www.hoa-colorado.org](http://www.hoa-colorado.org))
12. attend an educational program offered by our law firm or offered by the HOA or another law firm
13. and more

## Types of Common Interest Communities

### *Planned Community*

In planned communities, an owner owns a platted lot or unit. The HOA owns the common property, if any.

### *Condominium Community*

In these communities, an owner owns a condominium unit and is a co-owner of the common property. The common properties are co-owned by all owners, by percentage. The HOA in a condominium community does not usually own real property.

### *Cooperative Community*

In a coop, an owner owns stock or a membership in the HOA. The owner has a lease or exclusive occupancy right to a home. The HOA owns all of the real property.

## Basics of HOAs and Common Interest Communities

### *What is a common interest community or HOA?*

A common interest community or HOA is comprised of individual owners who are obligated to pay mandatory (not voluntary) assessments to an HOA.

*What is an owners' association, HOA (or association)?*

An HOA is, typically, a nonprofit corporation, comprised of the owners as members, with members electing a board and the board engaging a management company or agent. The HOA operates and governs the community based on the governing documents and its contract with the management company or agent.

*What is the basis of the HOA?*

The legal basis of HOAs:

- the governing documents
- supporting or enabling law (statutes—federal, state and local)—and constitutions)
- lender requirements
- regulations – federal, state and local
- case law
- standards of professional organizations

*What are governing documents?*

Governing documents include the declaration (also known as covenants or CC&R's), the plat or map, the articles of incorporation of the HOA the bylaws and the rules, regulations and policies and procedures of the HOA.

**Rights of Owners and Residents**

Subject to the governing documents, each owner or resident typically has the following rights:

- Use of the Property Owned or Occupied. Individual owners have the right to use the property they own, residents have the right to occupy the property of the owner they live with, rent from or have otherwise arranged.
- Use of Common Property. Individual owners and residents have easement rights to use “common property” (sometimes referred to in the governing documents, and referred to, in the Colorado Common Interest Ownership Act, as “common elements”).
- HOA Pursuit of Objectives/Goals Stated in the Governing Documents. Owners and residents have the right to have the HOA pursue its stated objectives, goals and purposes, including:
  - property values are protected
  - property values are enhanced
  - quality of life and living are protected and enhanced
  - maintenance of certain property by the HOA
  - maintenance of the owner's property by the owner
  - compliance by all owners and residents with the governing documents
- An Accountable, Responsive, Transparent and Competent HOA. Owners and residents have the right to an accountable, responsive, transparent and competent HOA.
  - “accountable” is defined as (courtesy of M-W.com):
    - subject to giving an account: answerable (held her accountable for the damage)
    - capable of being accounted for: explainable
    - Synonym see: responsible
  - “responsive” is defined as (courtesy of M-W.com):
    - giving response: constituting a response: answering
    - (a responsive glance—responsive aggression)
    - quick to respond or react appropriately or sympathetically: sensitive
    - using responses (a responsive liturgy)
  - “transparent” is defined as (courtesy of M-W.com):
    - free from pretense or deceit: frank
    - easily detected or seen through: obvious
    - readily understood
    - characterized by visibility or accessibility of information especially concerning business practices

- Synonym: see: clear
- “competent” is defined as (courtesy of M-W.com):
  - proper or rightly pertinent
  - having requisite or adequate ability or qualities: fit (a competent teacher) (a competent piece of work)
  - legally qualified or adequate (a competent witness)
  - having the capacity to function or develop in a particular way; specifically: having the capacity to respond
  - Synonym: see sufficient
- Participation in Governing the HOA. Owners have the right to participate in governing the HOA by attending meetings, serving on committees, standing for election to the board of directors and electing the board of directors. Residents may also be allowed to attend, or, restricted from attending meetings. Check the bylaws and other governing documents.
- Property Maintenance. Owners and residents have the right to live in a community where the property that is the obligation of the HOA to repair is maintained according to established standards. Owners and residents also have the right to expect (and maybe even require) other owners to maintain the property they are responsible for.
- Use of Funds. Owners and residents have the right to prudent HOA expenditure of fees and other revenues or funds by the HOA.
- Copies of Governing Documents and Other Relevant Documents. Owners and residents have the right to receive all documents especially those that address rules and regulations governing the HOA. These documents should be provided prior to purchase and closing, or upon the owners joining the community or a resident renting in the community, or at any time while a member of the HOA.
- Access to Records. Owners have the right to relevant and appropriate HOA books and records.
- Fair Treatment. Owners and residents have the right to fair treatment by the HOA, community leaders and managers regarding financial and other HOA obligations. Owners and residents have the right to be treated honestly and with respect by the HOA, HOA leaders and management. Issues will arise, but should not be personalized. Fair treatment includes the opportunity to discuss payment plans and options with the HOA before foreclosure is initiated.
- Appeal of HOA Decisions. Owners have the right to appeal (to the board) those decisions of the HOA that adversely affect them.

## **Responsibilities of Owners and Residents**

Subject to the governing documents, each owner or resident typically has the responsibility to:

- Understand What They Own or Occupy. This includes condominiums and the difference between their unit and the common property, and also planned communities and the HOA’s ownership of the common property.
- Pay Assessments and Other Proper Charges of the HOA. These obligations of the owner must be met on a timely basis for the HOA to operate effectively. Residents (that are not owners) are not responsible for these charges.
- Read and Comply with the Governing Documents of the Community.
  - This includes the obligation to pay HOA assessments and proper charges of the HOA on time (see above). Owners should contact the HOA to discuss financial obligations and alternative payment arrangements.
  - Owners and residents must comply with restrictive and affirmative covenants in the declaration. This aids in maintaining and enhancing property values, based on established standards.
  - Owners and residents must also comply with the covenants, articles of incorporation, bylaws, rules, regulations, policies and procedures of the HOA.
  - Owners and residents must ensure that those who reside on the owner’s property (e.g., tenants, relatives, and friends) adhere to applicable parts of the governing documents.

- **Maintain Separate Liability Insurance and Casualty Insurance.** Owners and residents must maintain (as to their separate property interests and ownership) their own liability insurance for accidents within the property. Owners should also maintain casualty (or hazard or property) insurance on property in or on their Lot/Unit which is not insured under a property insurance policy maintained by the HOA.
- **Vote.** Owners have the responsibility to vote in community elections and on other issues.
- **Property Maintenance.** Owners and residents have the responsibility to understand who is required to maintain components of the community, including their own property or the property they occupy.
- **Duties and Responsibilities of the HOA, Board Members and Manager.** Owners and residents should understand, at least generally, and when needed, specifically, the duties and responsibilities of the HOA, board members and the manager. Owners and residents have the responsibility to know what the HOA and its board/officers/managing agent can do for them and cannot do. Too often, an HOA and its leaders are expected to solve all problems and cover all unexpected losses. These expectations are typically broader than the HOA's authority or required actions under the governing documents.
- **Serve on the Board.** All owners have a responsibility to run for and serve on the board, as representatives to the owners. Residents may be qualified to serve on the board. Check the bylaws. Board members serve the interests of the entire community, known as a duty to manage, that requires good faith and the care of ordinary prudent person in a similar position. As a representative of private governance of the community, the board and those elected to it seek to further the best interests of the community.
- **Treat HOA Leaders Honestly and Respectfully.** Just as owners and residents are to be treated honestly, fairly and with respect by the HOA and its leaders, owners and residents are responsible for treating the HOA and its leaders fairly with honesty and respect.
- **Offer Comments and Recommendations to the Board, the HOA and Management.** Owners and residents have the responsibility to offer comments and recommendations to HOA leaders and management in a calm and businesslike manner. Issues will arise, but
  - should not be personalized. Comments should be made without profanity, personal attacks or shouting.
    - Consider the best interests of the community before and when offering comments to the board, the HOA, and management.
    - Offer comments which are relevant to the purpose of the HOA and/or management.
- **Request Reconsideration.** When a decision of the leaders of the HOA or management of the HOA is viewed by an owner or resident as adverse to the community or adverse to an owner or resident, owners and residents have the responsibility to request reconsideration of that decision.
- **Provide Current Contact Information.** To allow the HOA to be able to communicate with an owner or occupant, send notices of member meetings, newsletters, etc. to owners, current contact information is to be supplied. This helps ensure receipt of information from the community.
- **Avoid Interference with Contractors Engaged by the HOA.** Owners and residents are not the persons who have contracted with vendors of the HOA. The HOA has entered into those contracts. Owners and residents have the responsibility to avoid interference with these contractors while a contract is in progress. All communications and complaints about a contractor's work should go through the HOA manager, an HOA representative, or be in accordance with policy.
- **Avoid Harassing and Threatening Others.** Owners and residents have the responsibility to avoid harassing or threatening others through any means to control or instill fear in any other owner or resident, board member, the manager or any agent of the HOA.
- **Use Professional and Businesslike Language and Decorum.** Owners and residents have the responsibility to be professional and businesslike, and to act with appropriate decorum when interacting with the HOA, its leaders and management.
- **Avoid Personal Attacks.** Owners and residents have the responsibility to avoid personal attacks, other owners, residents, board members, managers and service providers. NOTE: Colorado law allows for personal protective orders, to seek to preserve the peace, and to avoid physical harm or injury to another person.

### **Effective Owners and Residents = More Value and Influence in the Community**

Educated owners and residents can focus and be more effective in influencing their HOA when they:

- have been introduced to the operation and purpose of their HOA (a board or owner generated mission or vision statement can be very helpful)
- are aware of their role and actions they can take
- have sensitivity to the role of HOA leaders (officers and board members) who serve as volunteers