

**HOA Information & Resource Center**  
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<http://www.dora.state.co.us/real-estate/hoa.htm>

## **BEFORE YOU PURCHASE IN AN HOA**



Many of Colorado's new homebuyers will purchase their home in a development or condominium that is in a homeowners' association. Buying a home is a huge decision and investment therefore it is important that you know some of the implications of buying in a particular HOA. Common interest communities offer many benefits, but also homeowners need to understand that there are covenants, rules and regulations which can have a significant effect on how you live in your home and on the decisions you make regarding your property.



**What is an HOA?** An HOA describes not only a certain type of real estate and form of home ownership, but also a lifestyle that is becoming very common. Common interest developments are the fastest growing form of housing in the United States. HOAs may also be referred to common interest communities, condominium owners' associations or property owners' associations. In an HOA the owner of a unit or lot owns his lot or unit in addition to having a share of the common areas as a joint tenant with other members of the association. Typically, the purpose of an HOA is to control the appearance of the property, maintain the common areas, and to provide residents with shared amenities. Homebuyers who purchase in an HOA are responsible for paying their share of the dues and obeying the covenants, rules and regulations of the HOA.

**What does being in an HOA mean to me?** Being in an HOA means you receive the benefits of common ownership including providing you with shared neighborhood values, an opportunity to enforce uniform regulations, the ability to increase property values and to provide

recreational amenities. Additionally, you agree to restrictions on the use of your property through covenants and rules. Decisions made by persons who you may not know may affect the use and enjoyment of your property, lifestyle, freedom, and finances. There may be decisions made by a few persons on an executive board or committee that do not reflect the view of the majority of homeowners in the community. If you don't agree with decisions made by your board, your remedy is to use the democratic process of the HOA to seek election of other members of your HOA that are more sympathetic to your concerns, which may be a difficult process in an HOA where members are not active.

As a new homebuyer you should understand that in addition to the mortgage, you will be responsible for HOA dues which may change and special assessments may be levied, which may require a large unanticipated capital contribution from the members of the HOA. As an owner in an HOA, you are responsible for paying your share of assessments for as long as you own your property. When budgeting for a home purchase it is a good idea as a potential buyer to know what the dues currently are and to understand whether additional special assessments are anticipated. Prior to making a decision, the HOA Information Office and Resource Center encourages new homebuyers to talk to members of the HOA or attend a meeting of the board of directors; obtain a copy of the governing documents; and know the financial health of the HOA and whether there are any anticipated projects which would require large capital expenditures.

**How do I know if the home I am looking at is under an HOA?** According to Colorado law, during the negotiation of the purchase of the home, the seller is required to disclose whether the property is in an HOA. They should provide you HOA documents including a copy of the covenants, bylaws, most recent annual owners' meeting, minutes of any directors' or managers' meetings and most recent financial statements, if available, during the six-month

period immediately preceding the date of the contract. Sellers are required to disclose whether there are known violations of covenants or HOA rules and regulations. Sellers are also required to disclose whether there have been special assessments or increases in regular assessments that have been approved but not yet applied.

**Do I have to join an HOA?** While membership in some HOA's is voluntary, most HOA's are mandatory. This means that membership is automatic upon purchasing your home, townhouse, or condominium in a common interest community.

**What Laws Govern Homeowners' Associations?** The Colorado Common Interest Ownership Act, frequently referred to as CCIOA (pronounced KIOWA), §38-33.3-101, C.R.S., *et. seq.* governs HOAs in Colorado. Additionally, it is a requirement that HOAs incorporate as a non-profit corporation, for-profit corporation, or LLC, and are governed by Colorado corporate laws. Foremost the laws of contract and property, through the governing documents of the HOA, govern the relationship between the HOA and the homeowner. The governing documents include the Declaration (also referred to as the Declaration of Covenants, Conditions and Restrictions or CC&R's as well as Declaration of Covenants), articles of incorporation, bylaws, and rules and regulations that govern the relationship of the homeowner to the HOA. Even if the governing documents expand on the rights of the homeowners they cannot contradict or diminish the rights provided in CCIOA.

**What Are Covenants?** Covenants or restrictive covenants are a legal obligation in a deed by the seller upon the buyer of property to do or not do something. When a homeowner takes title of the property in an HOA, they are subject to the covenants of the subdivision that are enforced by the HOA. Typical covenants may include a prohibition against a certain color of house paint; a restriction on pets in a condominium; and restrictions on commercial

vehicles on the property. In addition to covenants, many HOA's have rules and regulations that further restrict the use of the common area. The covenants contained in the declaration are considered to "run with the land" meaning that when you buy the property you have no say in whether to abide by them and you cannot modify them during the negotiation of the purchase of your home. Although the HOA can amend covenants, it takes a majority of the homeowners' votes to take such action.

**What are Bylaws?** Bylaws are the corporate legal instruments adopted by the HOA for the regulation and management of the HOA. They are required by Colorado corporate laws and generally set forth how members vote for the board of directors, the number and terms limits of the officers, and duties of the board and elected officials.

**Who are the Community Association Managers?** Some homeowners sitting on an executive board or committee may not have the experience or background required to run an association. Often HOAs hire professional community managers to perform the day-to-day management of the HOA. It is important as a homeowner to understand the distinction between the Board of Directors for your HOA and the community association management company. Whereas the management company is responsible for the day-to-day maintenance and upkeep of the HOA, the Board is ultimately responsible for all decisions of the HOA. Before purchasing in an HOA you may want to learn the name of the management company and its reputation since they will also become part of your life in an HOA.



**What Are the Different Assessments and Fees I Can Expect?** There are two types of assessments, regular and special. Regular assessments or dues that may be payable yearly,

quarterly or monthly and go to the overall operation and maintenance, of the association as well as to the reserve fund and often to the HOA insurance and legal fees. Special assessments are those assessments made on a one time basis for major repairs, replacement, or new construction, may be assessed as well. There also may be monetary penalties or fines levied by an HOA against a homeowner for damage to the common area or imposed as a disciplinary measure for a violation of rules or regulations.

**Before I Consider Purchasing In an HOA, How Do I Get Information on the Association?** You can contact the HOA directly if you wish to receive a copy of their governing documents or other information. HOAs are required to be registered with the Division of Real Estate, and you can search for an association at <http://www.dora.state.co.us/real-estate/hoa.htm>. Provided with the registration is a reception number for the Declaration of Covenants of an association, which can be accessed at the clerk and recorder's office of the county where the property is located.

**Does the HOA Information Office assist with the Enforcement of the CCIOA, Bylaws and Covenants?** The HOA Information Office does not have investigative, regulatory or enforcement power and will not intervene in disputes between homeowners and their HOA. The HOA Information Office is a clearinghouse of information concerning the basic rights and duties of homeowners, declarants and HOA's under CCIOA.