

2017 Annual Report

HOA Information and Resource Center

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COLORADO

Department of
Regulatory Agencies

Division of Real Estate

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Executive Summary

The HOA Information and Resource Center (“Center”) was created in 2010,¹ and is organized within the Division of Real Estate (“Division”), a division of the Department of Regulatory Agencies (“DORA”). As directed by Colorado (“State”) law, the Center collects information from HOAs via registration and from the inquiries and complaints received. The Center is also responsible for providing information and resources to unit owners (“homeowners”), HOA boards, declarants,² and other interested parties about the rights and responsibilities set forth in the Colorado Common Interest Ownership Act³ (“CCIOA”) and other applicable State law.

Pursuant to CoIo. Rev. Stat. § 12-61-406.5(3)(c), the HOA Information Officer (“Officer”), who administers the Center, presents an annual report to the Director of the Division (“Director”) after analyzing the aforementioned information. This document (“Report”), the 2017 annual report, provides an overview of the experiences of homeowners and others in matters involving HOAs, and insight into the trends and statistics of the broader common interest community (“CIC”) industry within Colorado.⁴ A variety of statistics on complaints received and registered HOAs are given especial coverage. The Report also contains a brief summary of the legislation enacted in 2017 that pertains to HOAs, select operational details of the Center, and notes on the future direction of the Center.

In conclusion, the Report is part of the Center’s ongoing commitment to providing information, education, and resources to those affected by, involved with, or interested in HOAs and CICs that are subject to the CCIOA.

¹ HB10-1278 as codified in CoIo. Rev. Stat. § 12-61-406.5(1); effective January 1, 2011.

² From CoIo. Rev. Stat. § 38-33.3-103(12):

“‘Declarant’ means any person or group of persons acting in concert who:

- (a) As part of a common promotional plan, offers to dispose of to a purchaser such declarant’s interest in a unit not previously disposed of to a purchaser; or
- (b) Reserves or succeeds to any special declarant right.”

The declarant is typically the developer of the community.

³ CoIo. Rev. Stat. §§ 38-33.3-101 to -402 (2017).

⁴ From CoIo. Rev. Stat. § 38-33.3-103(8):

“‘Common interest community’ means real estate described in a declaration with respect to which a person, by virtue of such person’s ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration. Ownership of a unit does not include holding a leasehold interest in a unit of less than forty years, including renewal options. The period of the leasehold interest, including renewal options, is measured from the date the initial term commences.”

Legislative

The Legislature passed one HOA-related bill during the 2017 session and DORA completed a Community Association Manager Program Sunset Review; this legislative update contains summaries of those matters.

2.1 HB17-1279 – CONCERNING THE REQUIREMENT THAT A UNIT OWNERS' ASSOCIATION OBTAIN APPROVAL THROUGH A VOTE OF UNIT OWNERS BEFORE FILING A CONSTRUCTION DEFECT ACTION

This bill amends CoIo. Rev. Stat. § 38-33.3-303.5 of the CCIOA by requiring that prior to the filing of a construction defect suit against a developer or builder, the HOA Board must;

1. Notify the unit owners and the developer or builder of the potential construction defect lawsuit;⁶
2. Hold an owner meeting wherein both the association (acting through the board) and the developer or builder have an opportunity to present their side of the argument and any facts and/or arguments deemed relevant such as the potential costs and benefits of a suit; and⁷
3. Obtain the approval of a majority (51%) of the unit owners after giving them detailed disclosures about the lawsuit and its potential costs and benefits.⁸

The meeting of unit owners commences a 90-day voting period during which the HOA will accept votes for or against proceeding with the lawsuit. Statutes of limitation are tolled during this period. The HOA is required to keep copies of its mailing list and maintain records of the votes received. The voting period may end in less than 90 days if sufficient votes are received to approve the lawsuit before 90 days have elapsed.⁹

Note that this summary does not attempt to acquaint readers with all the aspects of the bill. We recommend that those who desire a comprehensive understanding review the bill in its entirety.

⁵ CoIo. Rev. Stat. § 38-33.3-303.5

⁶ CoIo. Rev. Stat. § 38-33.3-303.5(II)(c)

⁷ CoIo. Rev. Stat. § 12-72-101 (II)(c)(II)

⁸ CoIo. Rev. Stat. § 38-33.3-303.5(II)(A)

⁹ CoIo. Rev. Stat. § 38-33.3-303.5(II)(c)(II)(A)

Legislative

2.2 Community Association Manager (CAM) Program Sunset Review

On October 13 2017, The Colorado Office of Policy, Research and Regulatory Reform (COPRRR) evaluated the licensing of community association managers. The period under review represented the entire life of the program.

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature.¹⁰ Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Several recommendations were made within the sunset review.

- Recommendation 1 – Continue the Community Association Management Practice Act for five years, until 2023.
- Recommendation 2 – Authorize the Director to establish renewal fees for Management Companies.
- Recommendation 3 – Amend the definitions of the terms, “community association management” and “Community Association Manager,” and authorize the Director to promulgate rules clarifying the supervision requirements for support staff who are providing clerical, ministerial, accounting or maintenance functions to a licensee and specify any activities that would trigger support staff to be licensed.
- Recommendation 4 – Amend the supervision requirements for the Apprentice license type, and require the Director to define by rule the appropriate level of supervision related to specific activities of an Apprentice and detail any supervision requirements that are necessary to protect the public.
- Recommendation 5 – Repeal any references to private, professional credentials and authorize the Director to approve, by rule, any credentials, examinations or education deemed equivalent or superior to the education and examination otherwise required by the director.
- Recommendation 6 – Enhance the due process protections of a cease and desist order.

Note that this is a brief summary of the report and not intended to acquaint readers with all the aspects of the report. We recommend that those who desire a comprehensive understanding review the report in its entirety. HB18-1175 has been introduced in the 2018 Colorado legislative session to address the Community Association Manager Program Sunset Review.

To view a copy of the report, please go to:

https://drive.google.com/a/state.co.us/file/d/0B1eD7wvZltwxQWlxU1ZiRk5RcW8/view?usp=drive_web

¹⁰ 2017 Sunset Review: Community Association Management Practice Act

Registration

State law mandates every HOA to register and renew their registration on an annual basis.¹¹ Every registering HOA must also submit a fee and update any relevant information in their registration within ninety days of any change.¹² An HOA that fails to register or allows its registration to lapse may not impose or enforce certain liens and is limited in the actions it may pursue or specific means of enforcement it may utilize, until it is validly registered.¹³

The Center is charged with the task of registering HOAs in Colorado. Furthermore, the Center collects the information provided in these registrations into a database.¹⁴ As of December 31, 2017, 8,006 HOAs are registered with the Center.

3.1 Compliance

While there has been an increase in the number of registered HOAs, the absence of authority to enforce the registration requirement hinders the Center in its efforts to register all HOAs within Colorado. The only encouragement given to HOAs to register is the lien provision, which is solely an affirmative defense to be employed in applicable legal proceedings.

Beyond failing to register, one of the issues facing the center is the renewal. Although verifying that all HOAs have renewed would be impossible without conducting a census-like effort, at least 1659 HOAs have failed to renew. It appears that some HOAs are abusing CoIo. Rev. Stat. § 38-33.3-401(4)(a) Registering once and then not renewing their registration for years on end or claiming that they are validly registered while providing erroneous data. The Division lacks the statutory authority to impose other remedies for failing to renew or to revoke registrations.

¹¹ From CoIo. Rev. Stat. § 38-33.3-401(1):

“Every unit owners’ association shall register annually with the director of the division of real estate, in the form and manner specified by the director.”

¹² CoIo. Rev. Stat. § 38-33.3-401(2)(a)

¹³ CoIo. Rev. Stat. § 38-33.3-401(3)

¹⁴ Pursuant to CoIo. Rev. Stat. § 12-61-406.5(3)(a)(I).

REGISTRATION

3.2 Units

A unit, as defined by the CCIOA, is a physical space set aside for separate ownership or occupancy.¹⁵ The sum of the unit counts accompanying all the registrations provided by HOAs is 834,517 as of December 31, 2017.

3.2.1 Timeshares

Time-sharing is a form of ownership of a unit, or more specifically, a time share unit, which is divided temporally, creating time share estates.¹⁶ Within the scope of registration, a time

share unit is tallied as one unit, not the number of time share estates it is divided into. Hereafter, no distinction is made between time share units, as defined in the Condominium Ownership Act, and units, as defined in the CCIOA.

3.3 Common Interest Communities

The CCIOA requires that the declaration of a CIC state whether the CIC is a condominium, cooperative, or planned community,¹⁷ and HOAs are required to provide the same information when registering with the Center. The distinction in the CCIOA between condominiums, cooperatives, and planned communities is made on the basis of ownership of real estate, not on the physical characteristics of the CIC; it is certainly possible for a CIC that resembles the one described under *Condominiums* to be a planned community or vice versa.

3.3.1 Condominiums

A condominium is a CIC in which real estate that is not designated for separate ownership by homeowners is owned in common by those homeowners.¹⁸ Many CICs registered as condominiums contain one or more multi-family dwellings, each of which is further divided into multiple units. Much of the remaining real estate (e.g., structures that do not contain units, the parts of buildings that contain, but are not within units, and unenclosed spaces) is owned in common by all homeowners; these parts are called common elements.

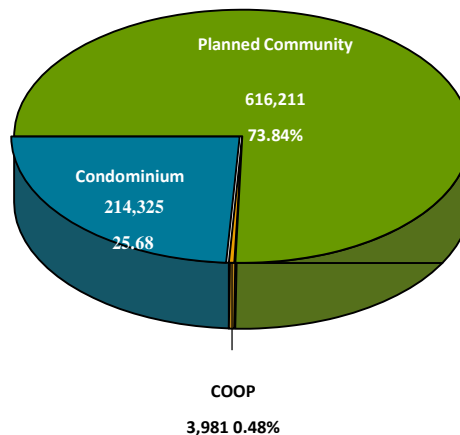


Figure 3.1 Chart of units by CIC type.

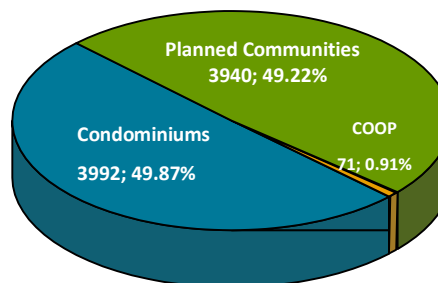


Figure 3.2 Chart of HOAs by CIC type.

¹⁵ As defined in CoIo. Rev. Stat. § 38-33.3-103(30).

¹⁶ Definitions related to time-sharing can be found in CoIo. Rev. Stat. § 38-33-110, a section of the Condominium Ownership Act, which precedes, but is not entirely superseded by, the CCIOA.

¹⁷ CoIo. Rev. Stat. § 38-33.3-205(1)(a)

¹⁸ CoIo. Rev. Stat. § 38-33.3-103(9)

REGISTRATION

3.3.2 Cooperatives

The least common type of CIC is the cooperative. In a cooperative, the HOA owns the real estate and homeowners are granted exclusive possession of a unit on the basis of ownership in the HOA.¹⁹

3.3.3 Planned Communities

A planned community is simply defined as a CIC that is neither a condominium nor a cooperative; however, a planned community may contain condominiums or cooperatives.²⁰ Commonly, CICs registered as planned communities encompass many single-family houses, each of which is equivalent to a single unit; the structure of the house and a small surrounding area are owned exclusively by the homeowner.

3.3.4 Pre-CCIOA Common Interest Communities

With the entry of HB13-1134 into State law, the issue of whether pre-CCIOA HOAs are required to register has been resolved. HB13-1134 amended the list of CCIOA sections applicable to preexisting CICs²¹ to add the registration mandate.²²

This change, however, does not affect the applicability of other sections of the CCIOA to preexisting CICs, thus the Center continues to compile statistics on the portion of HOAs that may be covered by exemptions that apply to preexisting CICs. The Center uses the Secretary of State ID issued to an HOA to ascertain whether the CIC may qualify for the aforementioned exemptions; the IDs are collected from HOAs as part of the registration process.

HOAs may exercise other exemptions in the CCIOA as well, such as the exemption for large planned communities,²³ exemptions for small or limited expense CICs,²⁴ and exemptions for timeshares.²⁵ HOAs are not currently required to indicate the exemptions they exercise when registering, so the Center is limited in its ability to conduct a comprehensive survey on the use of these exemptions.

¹⁹ CoIo. Rev. Stat. § 38-33.3-103(10)

²⁰ CoIo. Rev. Stat. § 38-33.3-103(22)

²¹ CoIo. Rev. Stat. § 38-33.3-117

²² CoIo. Rev. Stat. § 38-33.3-401

²³ CoIo. Rev. Stat. § 38-33.3-116.3, *et alibi*. HOAs are not required to state the acreage of associated CICs when registering.

²⁴ CoIo. Rev. Stat. §§ 38-33.3-116, 38-33.3-119, *et alibi*. From registration data: 1,299 CICs (16.8%) contain no more than

²⁵ CoIo. Rev. Stat. §§ 38-33.3-209.4(4), 38-33.3-209.7(2), 38-33.3-302(4)(b), 38-33.3-303(4)(b)(V), 38-33.3-308(2)(b)(II), 38-33.3-308(2.5)(c), 38-33.3-310(1)(b)(II), 38-33.3-317(1)(e), 38-33.3-317(3)(g), *et alibi*.

REGISTRATION

Registrations by County

County	Active HOAs	Expired HOA
Adams	621	62
Alamosa	0	3
Arapahoe	571	70
Archuleta	47	7
Baca	0	0
Bent	0	0
Boulder	589	130
Broomfield	81	6
Chaffee	35	10
Cheyenne	0	0
Clear Creek	6	1
Conejos	3	0
Costilla	3	0
Crowley	0	0
Custer	15	3
Delta	6	4
Denver	978	211
Dolores	1	0
Douglas	332	38
Eagle	487	122
El Paso	569	82
Elbert	10	6
Fremont	14	2
Garfield	184	41
Gilpin	4	1
Grand	163	33
Gunnison	154	29
Hinsdale	4	2
Huerfano	12	3
Jackson	2	2
Jefferson	782	114
Kiowa	0	0
Kit Carson	0	0
La Plata	170	48
Lake	7	2
Larimer	726	149
Las Animas	8	7
Lincoln	0	0
Logan	3	1
Mesa	233	92
Mineral	0	0
Moffat	1	2
Montrose	60	15
Montezuma	8	5
Morgan	2	1

Otero	0	0
Ouray	19	10
Park	7	5
Phillips	0	0
Pitkin	211	88
Prowers	0	0
Pueblo	43	12
Rio Blanco	1	1
Rio Grande	7	4
Routt	224	42
Saguache	2	0
San Juan	0	0
San Miguel	178	26
Sedgwick	0	0
Summit	479	94
Teller	25	8
Washington	0	0
Weld	462	78
Yuma	0	0

Table 3.4 Registered & Expired HOAs by County

REGISTRATION

3.5 Registration Fee

Throughout 2017, the registration fee was \$27. HOAs that are not authorized to make assessments and do not have any revenue or HOAs with annual revenues of \$5,000 or less are not required to pay this fee.²⁶ This provision does not, however, absolve any such HOA from still registering.

As the Center is responsible for collecting registration fees, HOAs are required to inform the Center whether they are exempt from paying the fee or not.

Fee Status	HOAs Total		Condominiums		Cooperatives		Planned Communities	
Exempt	568	7.09%	167	29.5%	19	3.35%	383	67.15%
Not Exempt	7,438	92.91%	3,825	51.43%	52	0.7%	3,557	47.87%

Table 3.5 HOAs by fee status.

²⁶ CoIo. Rev. Stat. § 38-33.3-401(2)(b)

Inquiries

One of the main objectives of the HOA Information and Resource Center is to provide information to interested parties about HOAs and CICs that are subject to the CCIOA. In accordance with State law, the HOA Information Officer acts as a clearinghouse for information concerning the basic rights and duties of unit owners, declarants, and HOAs.²⁷

The Center logged 5,161 separate inquiries during year 2017. In responding to these inquiries, the Center answered questions and provided referrals to applicable legal, alternative dispute resolution, and government services. Parties that contacted the Center for information include: homeowners, tenants, community association managers, HOA board members, attorneys, government agencies, vendors, and declarants.

Most of the inquiries to, and assistance from, the Center pertained to the following areas:

- The governing documents of an HOA, namely, the map or plat, declaration, articles of incorporation, bylaws, and rules and regulations;
- Election and quorum issues, as well as the use of proxies in voting, and election monitoring;
- Meeting issues, including: quorums, meeting notices, meeting minutes, owner's meetings, board meetings and executive sessions, as well as meeting procedures and best practices in running a meeting;
- Harassment, intimidation and retaliation concerns in the community;
- The use of mediation in HOA disputes;
- Communication issues including membership lists, newsletters and community websites;
- The CCIOA law and its applicability to pre and post-CCIOA communities;
- The Colorado Revised Non-Profit Act and its applicability to HOAs;
- The basic rights and responsibilities of homeowners;
- Transparency concerns of an association;
- The financial aspects of an HOA, including assessments (both general and special), accounting and budgeting, insurance, audits and reserves;
- Maintenance responsibility and neglected upkeep of the community, major community repairs, and community safety issues;
- The enforcement capabilities of an HOA, such as levying fines on homeowners, filing liens and foreclosing on units, collection practices, and due process rights with enforcement;
- Maintenance of records by the HOA, and the disclosure and production of HOA records to homeowners;
- Issues concerning the managing and operation of self-managed associations;
- Senior issues and concerns living in a CIC;
- The new community association manager program, including who is and who is not required to be licensed;
- Declarant issues, including disclosure of documents, transfer of control, and enforcement of governing documents;
- Regulatory compliance concerning HOA registrations;
- Marijuana issues, including medicinal and recreational use, as well as illegal grow operations affecting communities;
- Rental restrictions and condominium FHA certification;
- The functions and duties of the Center (e.g., how it assists homeowners, registers HOAs, and processes complaints); and
- The statutes that constitute, and the bills that impact, HOA law.

²⁷ CoIo. Rev. Stat. § 12-61-406.5(3)(a)

Complaints

From January 1, 2017 to December 31, 2017, the Center received 948 complaints via mail, phone, e-mail, submission in person, and the Center’s website. The complainants were homeowners and others involved with HOAs.

Beyond the complaint itself, information collected includes the location of the HOA and details on the party or parties against whom the complaint is directed, as applicable. For complaints directed against HOAs these details include the name, type, and contact information of the HOA, and whether the HOA is managed by a third-party, and if so, the name of that third-party.

5.1 Geographical Distribution of Complaints

The Center uses information collected from submitted complaints to determine the geographical area of the HOA concerned.

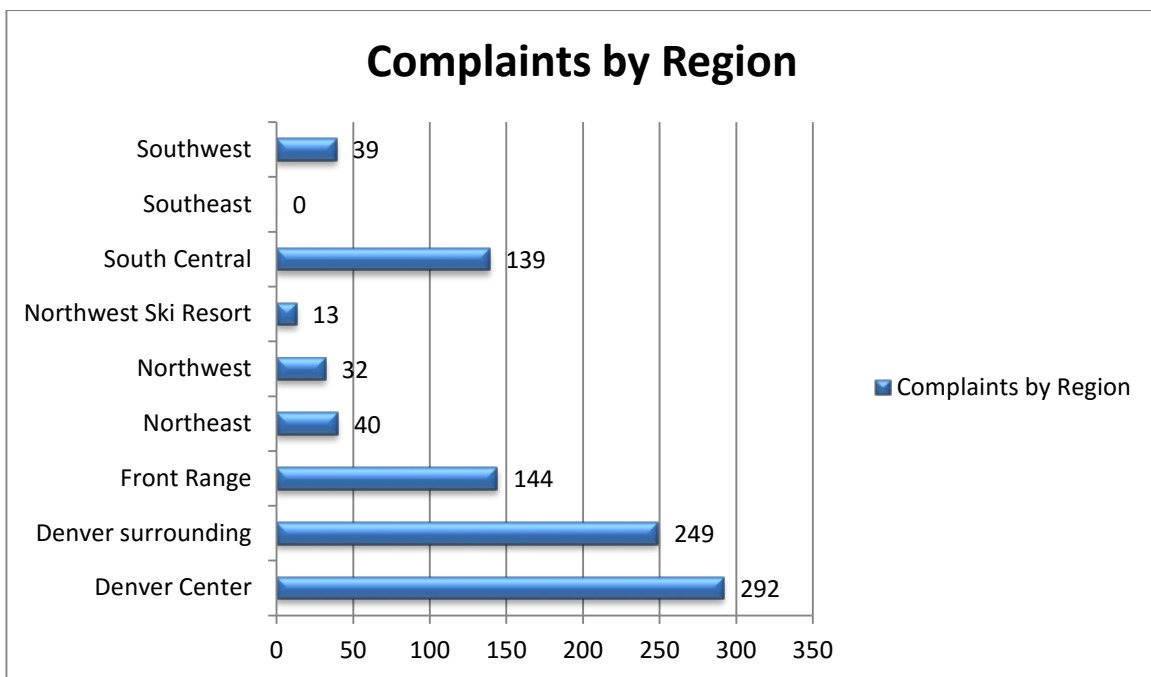


Figure 5.1 Chart of complaints by region.

COMPLAINTS

5.2 Classification of Complaints

The Center categorizes the complaints it receives according to type. Types that accounted for fewer than seven complaints were placed under *Miscellaneous*.

The nature of complaints associated with condominiums and planned communities were very similar. Of the 948 complaints against an HOA in general or its board of directors that were received, 13 were directed towards declarant-controlled boards. With regard to all of the complaints received by the Center,

85% involved professionally-managed communities, with the remainder being reported in self-managed communities.

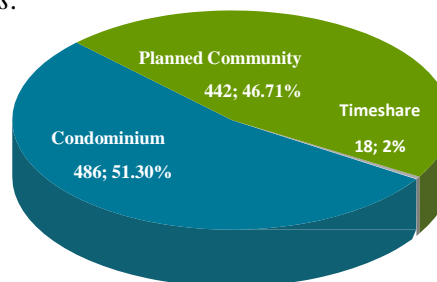


Figure 5.2 Chart of complaints by CIC type.

The overall highest number of complaints received for 2017 centered on not performing maintenance and repairs, Examples include common building structures and amenities not undergoing routine maintenance, or taking excessive time to repair common elements frequently resulting in safety and liability concerns to homeowners. A large number of complaints in this category have to do with neglected maintenance over many years, which later resulted in either much higher repair bills, a large increase in assessment dues, or a large special assessment for owners as a result of underfunded reserves.

At 11.29% allegations of the association not enforcing any covenants or rules and regulations at all, improperly enforcing those covenants against an owner, selectively enforcing a covenant or rule and regulation against one owner but not another, or having lax enforcement for the benefit of a board member or officer accounted for the second largest number of overall complaints received by the Center.

Communication continues to be a major complaint area, with it making up 10.48% of the overall complaints. Accusations arise of owners not properly or adequately being informed of owner and board member meetings, little or no communication to the owners of ongoing events in the community, no immediate access to community information (which could often be resolved with a simple association website, newsletter, or e-mail to homeowners), and board members ignoring or being dismissive toward owner concerns.

A large portion of the complaints received centered on CICs ignoring or intentionally not following the covenants, conditions and restrictions (“CC&Rs”) of the association, its declarations, bylaws, or rules and regulations. There were many reports of board members intentionally not following obvious governing document provisions and proceeding with matters contrary to those provisions, as well as contrary to professional legal advice. Also reported to the Center were instances that the association’s governing documents had not been updated to comply with many provisions of the CCIOA where required, and that those statutory provisions were not being followed by the association.

COMPLAINTS

A combined area of complaints pertaining to meetings and elections included: not obtaining quorum requirements for meetings; utilizing improper meeting procedures and motion practices; not allowing owners to attend board meetings; the improper use of board member executive sessions; not allowing owners to speak on issues of concern as well as issues being voted on by the board of directors; the improper use, assignment and counting of proxies in voting by board members; not holding elections of board members when required to do so; lack of transparency and no independent oversight of elections and their results; and not keeping records of owner meeting quorum and election results. The Center also received complaints about not informing owners of regularly scheduled board meetings and association boards not recognizing special meeting requests pursuant to statute.

An important area of complaints pertained to poor accounting practices, inadequate budgeting for the association, and the increase of assessments to cover those deficient practices. These matters accounted for 10.97% of all complaints received by the Center. Many complaints related to sharp assessment increases in order to cover HOA deficits. There were also complaints relating to inaccuracies with owners' accounts, resulting in owners being charged incorrect late charges, interest, and fines. There were also some reported instances of board members misappropriating funds and not fully disclosing the financial state of the HOA. Connected with some of these misappropriation instances were conflicts of interest of board members and vendors, sometimes where the board members themselves were paid for work not bid out for the community, vendor kickbacks, and board members being paid for being on the board when it was not allowed by the governing documents.

COMPLAINTS

Complaints by Type

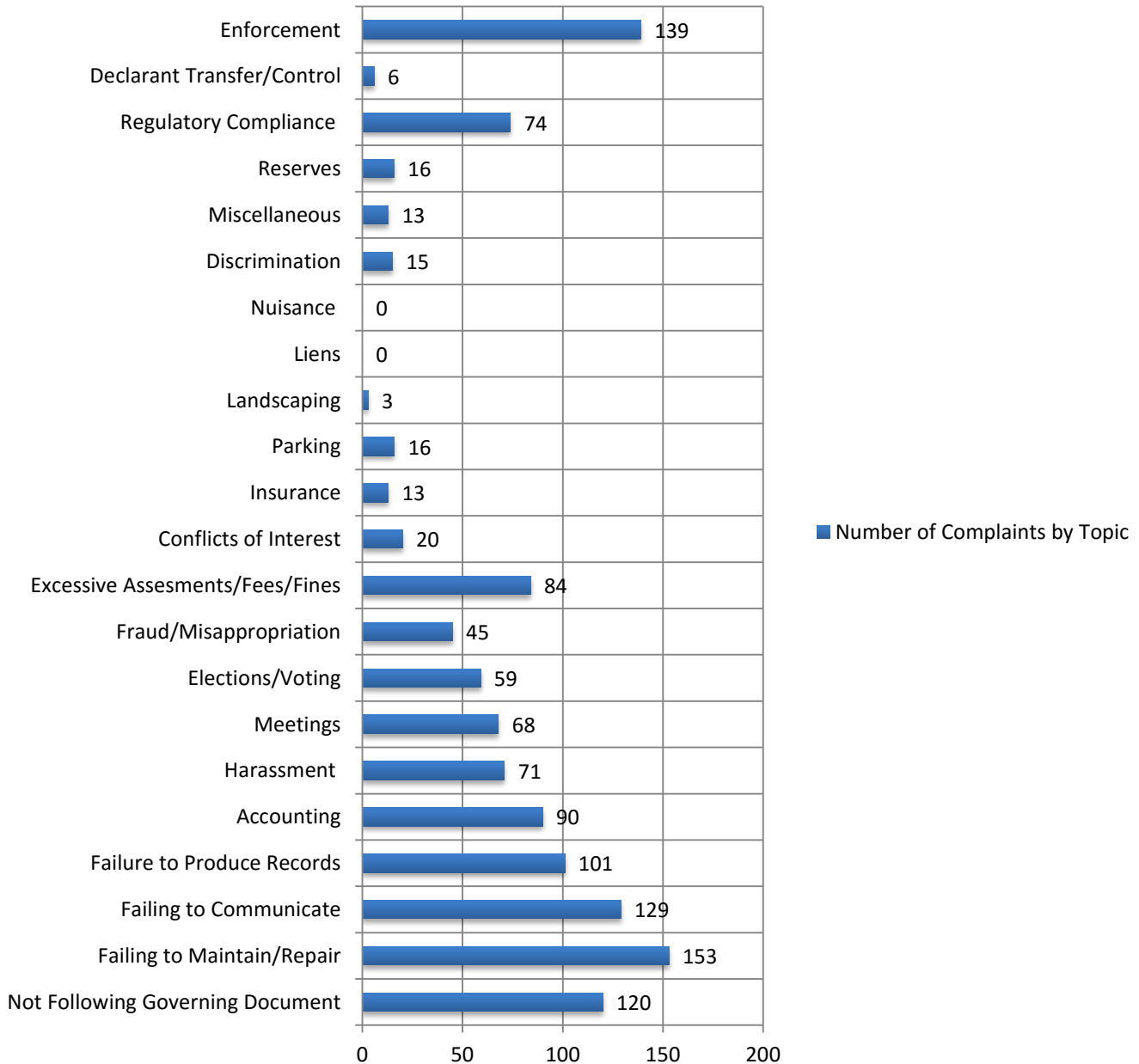


Figure 5.3 Chart of all complaints submitted to the HOA Information and Resource Center, by type.

Accomplishments and Objectives

6.1 Review of 2017

Throughout 2017 as in 2016, the HOA Information and Resource Center continues to make its website more relevant and useful for homeowners, HOA board members, and other interested parties. Providing pertinent State and Federal law and other resources online in one place is a priority for the Center. The website contains statutes, bills, educational materials (including electronic slide shows), legal and alternative dispute resolution resources, and a frequently asked questions section. Highly ranked by major search engines for relevant queries, the Center's website continues to experience significantly increased web traffic.

Besides handling over 5,000 inquiries for information and assistance, the Center has participated in over 60 public HOA forums, seminars and conferences, including senior fairs and town hall meetings. Guest presenters and industry writers have added to the Center's educational efforts and resources.

A wide variety of topics at HOA forums were presented, including homeowner education, Q&A's and an interactive session with professional mediators that discussed the benefits of mediation concerning HOA disputes. The Center also teamed up with the City of Boulder for its "HOA Days" presentations, participated in neighborhood events with Denver News 7, and had consumer informational booths at the Jefferson County Senior Law Day and Safety Fair. In addition, the Center provided education to the State Legislature regarding the Centers functions and authority. The Center held forums on senior issues in HOAs, educational classes for board members, including board member due diligence and communication, insurance requirements for HOAs and the use of alternative dispute resolution ("ADR") in HOAs, and participated in a radio show concerning one's rights and responsibilities when living in an HOA.

6.2 Direction of the Center in 2018

Homeowners and executive directors have continued to express the need for more educational materials covering HOAs that cater to non-professionals and self-managing boards of directors. The Center is investigating ways that new technology can bring this education to more people in HOAs, and aims to broaden its educational offerings with practical and concise information for homeowners and HOA board members. Collaborating with other government agencies and industry groups and professionals will also be a priority for the Center. The Center will continue to increase its outreach through public service announcements, webinars, and attending and arranging for events in cities and towns throughout Colorado.

The Center will strive to reach out to the Hispanic community to inform them about its existence and availability to assist those with HOA questions and issues.

HOA workshops, educational sessions, forums, and the availability of additional educational materials for homeowners will continue to be goals of the Center. Finally, should legislation be enacted that concerns additional functions and duties of the Center, it would be eager to undertake any efforts necessary to offer the best service possible.