
2020 ANNUAL REPORT

HOA Information & 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 2010¹, and is housed within the Division of Real Estate (“Division”), a division of the Department of Regulatory Agencies (“DORA”). Pursuant to Colorado (“State”) law, the Center collects and compiles information from Common Interest Communities² (“CIC”) through registration and from inquiries and complaints received by members of CICs and other interested parties. The Center is also responsible for providing information and resources to unit owners (“homeowners”), CIC boards, declarants³, and other interested parties about the rights and responsibilities set forth in the Colorado Common Interest Ownership Act⁴ (“CCIOA”) and other applicable State law.

As mandated by Colo. Rev. Stat. § 12-10-801(3)(c), the HOA Information Officer (“HOA Officer”), who administers the Center, presents an annual report to the Director of the Division (“Director”) after analyzing the above mentioned information.

This document, the 2020 Annual Report (“Report”), provides an overview of recent changes to HOA law, an examination of feedback from homeowners and others in matters involving CICs, and insights into the trends and statistics of the CIC industry within Colorado. A diverse set of statistics on complaints received and CIC registration figures are given particularly salient coverage. The Report also contains a brief summary of legislation considered and enacted in 2020 that pertains to CICs, select operational details of the Center, and notes on the future direction of the Center.

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

¹ HB10-1278 as codified in Colo. Rev. Stat. § 12-10-801(1); effective January 1, 2011.

² From Colo. 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.”

³ From Colo. 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.

⁴ Colo. Rev. Stat. §§ 38-33.3-101 to 402 (2020).

Definitions

Units: A unit, as defined by the CCIOA, is a physical space set aside for separate ownership or occupancy.⁵

Common Interest Communities ("CIC"): is 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.⁶ CIC is the formal term for an HOA.

Condominiums: A condominium is a type of CIC in which real estate that is not designated for separate ownership by homeowners is owned in common by those homeowners.⁷

Cooperatives: A Cooperative is a type of CIC in which the HOA owns the real estate and homeowners are granted exclusive possession of a unit on the basis of ownership in the HOA.⁸

Planned Communities: Planned Communities are a type of CIC that is neither a condominium nor a cooperative; however, a planned community may contain condominiums or cooperatives.⁹ Generally, 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.

⁵ As defined in Colo. Rev. Stat. § 38-33.3-103(30).

⁶ As defined in Colo. Rev. Stat. § 38-33.3-103(8)

⁷ Colo. Rev. Stat. § 38-33.3-103(9)

⁸ Colo. Rev. Stat. § 38-33.3-103(10)

⁹ Colo. Rev. Stat. § 38-33.3-103(22)

Legislative Review

During the 2020 legislative session, the Colorado General Assembly considered three bills that relate to CICs. HB20-1200, concerning the continuation of the Center, and implementing recommendations contained in the 2019 sunset report by DORA. HB20-1333, concerning the governance of unit owners' associations under the CCIOA and SB20-126, concerning the operation of a licensed family child care home in a common interest community.

3.1 HB20-1200 Sunset Homeowners' Association Information and Resource Center:

As introduced, section 1 of the act renews authorization of the Center for five years, until September 1, 2025. Section 3 of the act would have expanded the duties of the Center, in addition to creating the HOA Dispute Resolution and Enforcement Program (“program”) within the Division. Additional duties of the Center would have included creating and administering the program; providing educational materials; creating and administering a hotline for the public to use for informational and complaint submittal purposes; investigating complaints; and, reporting on the complaints received and issues resolved.

As passed, the act renewed the Center for five years, until September 1, 2025 and amended section 38-33.3-106.5 of the CCIOA, which prohibits a CIC from preventing the display of a religious item or symbol on the entry door or entry door frame of a unit. However, an Association may still prohibit or limit the item or symbol to the extent that it threatens public health or safety; obstructs use of a doorway; violates any law or ordinance; is obscene, or covers an area greater than thirty-six square inches.¹⁰

3.2 HB20-1333 Homeowners' Association Transparency Responsibility Competency:

As introduced, the act would have enacted requirements for CICs which were intended to create greater transparency. These requirements included mandating that all CIC’s create a website to provide online access to governing documents and contact information for the HOA and its management company, if any, and any other information required to be disclosed; and, the provision of complete and current governing documents by a CIC, including statements of all fees chargeable upon sale of a home in the community, to the Center for posting on the Center's website. The act would have also allowed unit owners to record any portion of an open meeting; invite a professional election inspector to observe executive board elections; and, it would have prohibited any action to be taken at an open meeting by written or secret ballot unless at least 20% of the unit owners in attendance so request. Finally, the act would have penalized a CIC \$50 per day if access to CIC records required to be provided within 30 calendar days after a request was submitted by certified mail and withheld beyond that period.

In addition to the above requirements, the act also would have required board members to complete a free, online basic training course offered or approved by the Center; required the board to commission a reserve study at least every 5 years and, at least annually, to adjust the HOA's finances accordingly. It

¹⁰ <https://leg.colorado.gov/bills/hb20-1200>

would have eliminated the option to forgo annual audits but allowed audits to be informal unless otherwise required by the bylaws or a majority vote; and it would have required that all new contracts for goods or services over a specific dollar amount to be awarded based on a competitive bid process involving at least 3 bids.

The act also would have placed greater limits on the amount of time that may pass before the declarant must turn over control of the CIC to unit owners, regardless of the percentage of units that remain unsold and would have also required sellers of property in CICs to certify that any provided CIC documents are correct and complete, and would have given the buyer the right to sue for damages if they are not.

On May 27, 2020 the act was postponed indefinitely by the House Committee on Transportation & Local Government.¹¹

3.3 SB20-126 Allow Home Child Care In Homeowners' Association Community:

The act prohibits a CIC from making rules preventing a licensed child care center from operation in a CIC. However, the act specifically preserves a CIC's right to adopt policies and standards regarding architectural guidelines, rules and regulations regarding landscaping, parking or other matters not specific to the operation of the business.¹²

¹¹ <https://leg.colorado.gov/bills/hb20-1333>

¹² <https://leg.colorado.gov/bills/sb20-126>

Registration

In fulfilling part of its statutory mandate¹³, the Center compiles a database of CICs that have registered with the Division. The Center also administers the registration program. While CCIOA requires CIC registration¹⁴, neither the Division nor the Center have any jurisdiction to enforce the registration requirement. However, CCIOA does provide a penalty for non-registration. In summary, it states that the right of a CIC that fails to register, or whose annual registration has expired, cannot impose or enforce a lien for assessments or pursue an action or employ an enforcement mechanism otherwise available to it until the CIC is validly registered¹⁵.

In considering the significant number of CICs failing to comply with the registration requirement, as shown in figure 4.1, it is presumed that the lack of authority to enforce the registration requirement may be a factor which impedes the Center in its efforts to register all Colorado CICs.

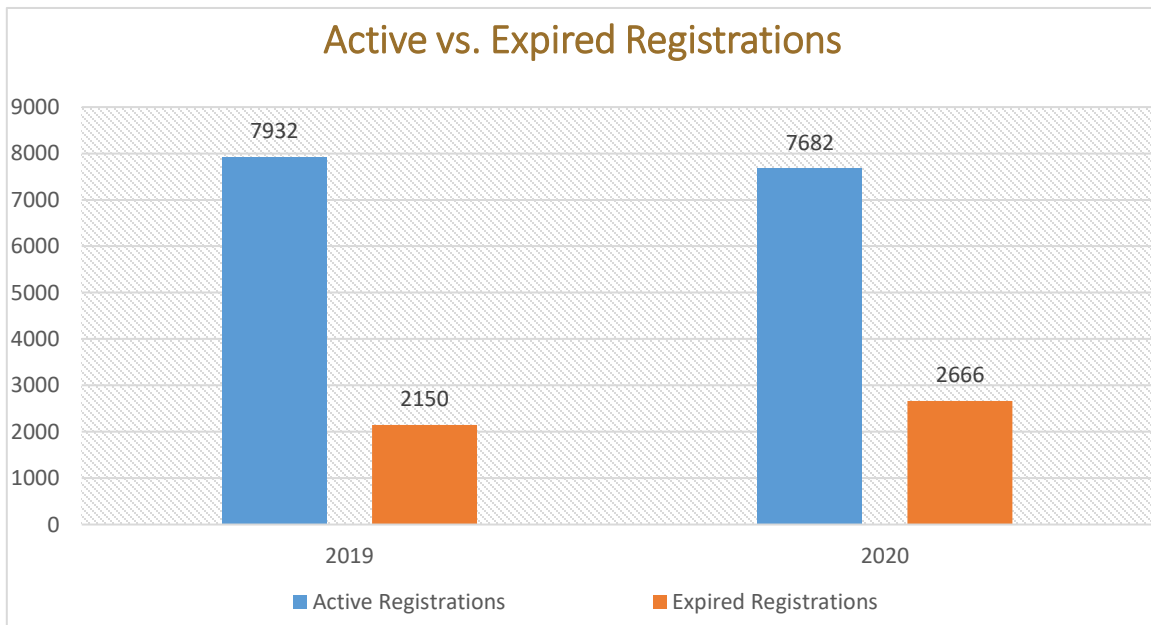
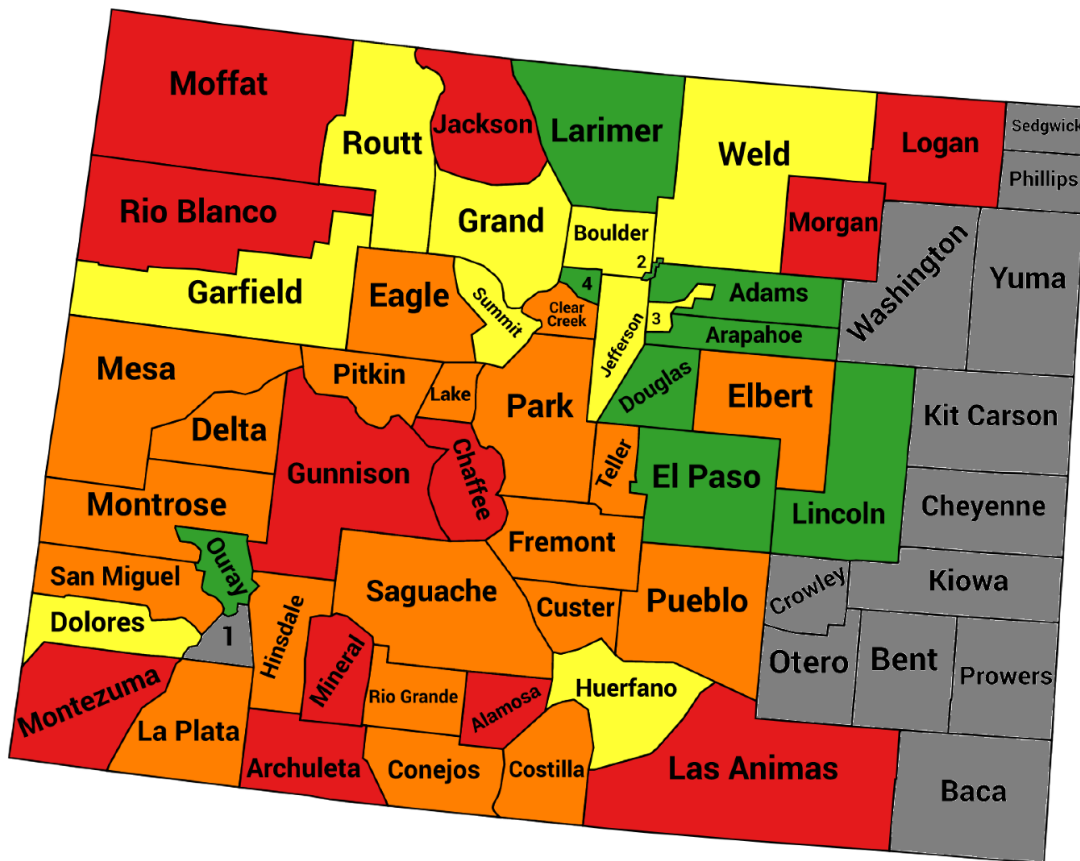


Figure 4.1 Registration Numbers for 2019 vs. 2020 (Average of Monthly Figures)

¹³ Colo. Rev. Stat. § 12-10-801(3)(a)(I)

¹⁴ Colo. Rev. Stat. § 38-33.3-401

¹⁵ Colo. Rev. Stat. § 38-33.3-401(3)



Compliance Rates

- >80.1%
- 70.1% - 80%
- 60.1% - 70%
- <60%
- County has zero registered and zero expired HOAs

- 1 San Juan
- 2 Broomfield
- 3 Denver
- 4 Gilpin

Figure 4.2 CIC Registration Compliance Rates by County (map)

4.1 Population

Statistics obtained from registered and expired CICs are used to determine how many of Colorado's population reside in CICs. This number is calculated using the U.S. Census Bureau figures for persons per household¹⁶, which is currently 2.62.

As of December 31, 2020, there were 7,794 registered and 2,692 expired CICs in Colorado. This totals to 10,486 known CICs in the state. Those CICs comprise a collective 996,856 units. By multiplying this number by the number of persons per household, we arrive a figure of 2,611,763. The total population

¹⁶ Persons per household gathered from <https://www.census.gov/quickfacts/fact/table/US/HCN010212>

of Colorado is currently estimated at 5,826,180. Therefore, it can be presumed that roughly 45% of Coloradans live in some form of CIC.

However, that number is likely much higher. As was previously mentioned, the significant number of CICs failing to comply with the registration requirement, demonstrates that the lack of authority to enforce the registration requirement impedes the Center in its efforts to register all Colorado CICs.

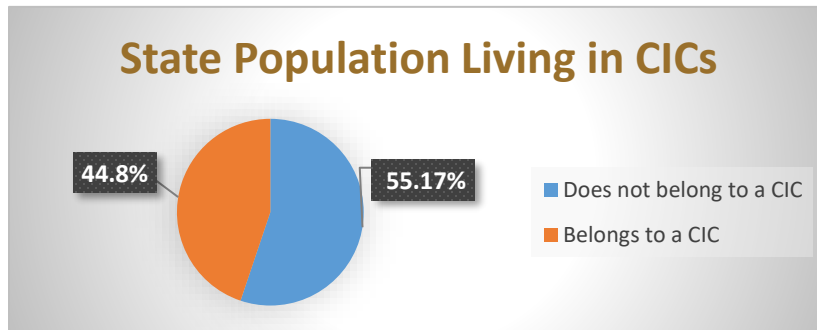


Figure 4.3 State Population Living in CICs

4.2 Management Type

One of the questions the Center asks CIC registrants during registration is how their community is managed. The options for registrants to select are either self-managed or professionally managed. While the Center only categorizes registrants into those two categories, "hybrid" management occasionally exist. This may occur when the Board delegates specific responsibilities to a professional manager, such as the collection of dues or the preparation of a budget, while the Board retains its remaining responsibilities such as covenant enforcement, daily operational duties, etc.

Of the 6,137 actively registered CICs in Colorado who are professionally managed, just over 50% are condominium communities, roughly 49% are planned unit developments (generally, single family homes) and only less than 1% were cooperatives. Of the 1,611 actively registered CICs in Colorado who are self-managed, 37% are condominium communities, 60% are planned unit developments (generally, single family homes) and 3% were cooperatives. Figures 4.5 and 4.6 illustrate these statistics.

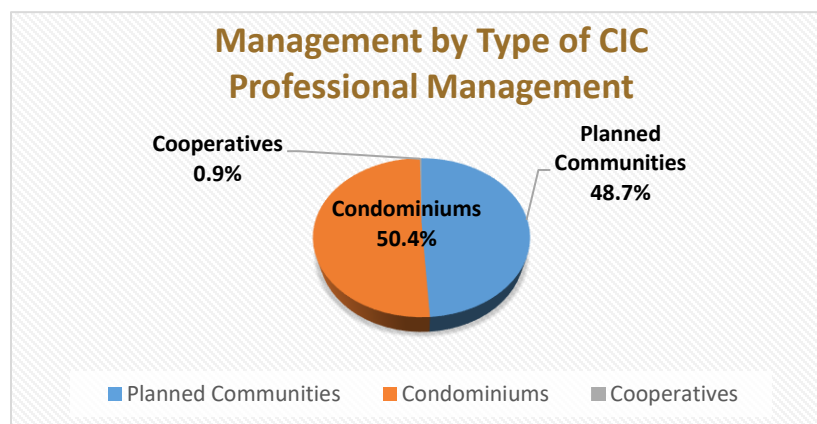


Figure 4.4 Management by Type of CIC - Professional Management

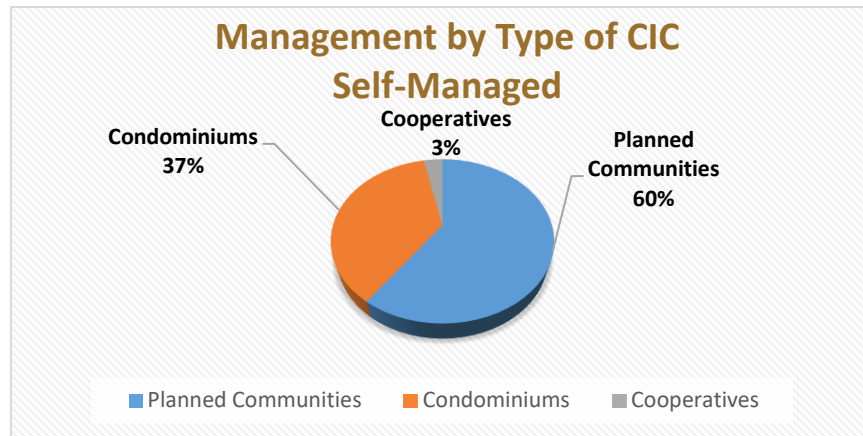


Figure 4.5 Management by Type of CIC – Self-Managed

The statistics associated with management type appear to show a strong preference by CICs for professional management. While Community Association Manager (“CAM”) licensing and regulation existed in the form of the Community Association Manager Program, housed in the Division of Real Estate from January 1, 2015, to July 1, 2019, the preference for professional management does not appear to have declined since the end of CAM regulation. This observation is based on only a 1% decrease in the number of professionally managed CICs since 2018¹⁷.

With regard to self-managed CICs, the vast majority of communities that decide to take on management responsibilities themselves are planned communities. This may be due to the fact that many CICs which are located in planned communities tend to provide limited services. For example, many planned community CICs are only responsible for trash and snow removal. This results in a CIC with limited operational duties, which tends to be more manageable for Board members lacking professional management experience.

In reviewing the data in figure 4.7 we see that even in more rural areas of the state, professional management services are preferred over self-management. This is further evidence that the lack of regulatory oversight of professional CAMs has not impeded CICs from retaining their services.

¹⁷ 2018 Annual Report of the HOA Information and Resource Center

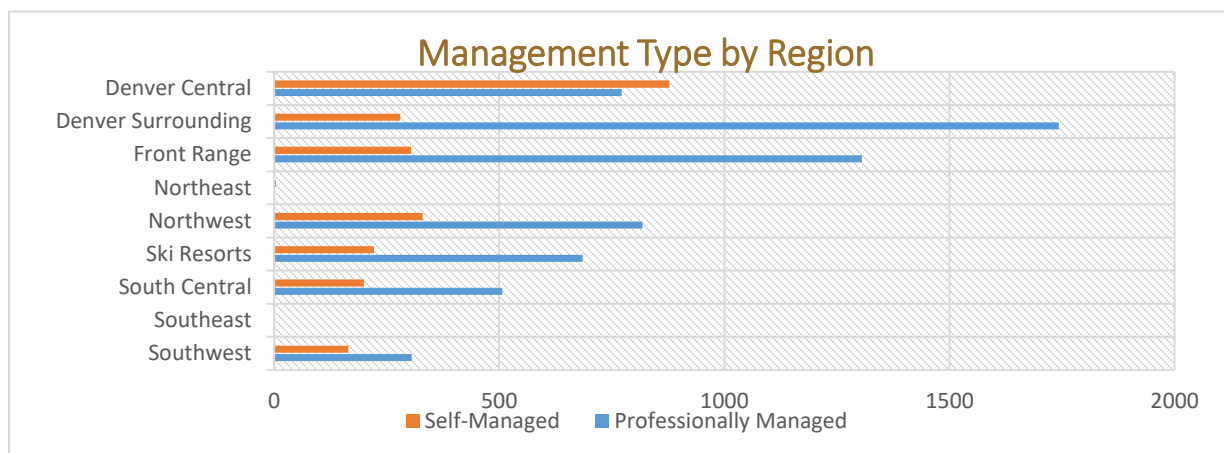


Figure 4.6 Management Type by Region

Inquiries

The Center logged a total of 3,619 inquiries during 2020. This includes emails, phone calls and written correspondence submitted via U.S. mail. While most inquirers are able to receive information requested via email, a surprising number of individuals who requested information from the Center in 2020 stated that they did not have access to the internet. While many of these individuals also stated they lived in more remote areas of the state, several suggested that the lack of internet was due to an inability to afford service. The Broadband Deployment Board (the “BDB”), housed within the Department of Regulatory Agencies, recognizes that access to broadband has a strong correlation with economic well-being. As such, the BDB’s mission is to connect communities and fuel economic growth in unserved areas across Colorado. The BDB is accomplishing this by providing grants through the Broadband Fund to deploy broadband service in unserved areas of the state. During 2020, the Center met with the BDB to provide information and statistics related to CICs and to discuss ways it may offer its ongoing assistance related to the BDB’s mission.

In responding to these inquiries, the Center answered any applicable question and frequently accompanied answers with additional resources such as copies of the CCIOA and The Colorado Revised Non-Profit Act (“Nonprofit Act”). The Center also made appropriate referrals to other government agencies and non-profit organizations. The parties that contacted the Center included home owners, board members, tenants, real estate brokers, title agencies, CAMs, attorneys, and other interested parties. Most of the inquiries received by the Center related to the following issues and concerns:

Figure 5.1 Inquiry Table

The HOA Center
<p>The role of the HOA Information and Resource Center (e.g. its statutory authorization and mandates); The Colorado Common Interest Ownership Act and the The Colorado Revised Non-Profit Act, the applicability of each and information about relevant provisions in regard to various issues; and Other statutes that relate to CICs, and any pending bills that may impact CICs.</p>
HOA Governing Documents
<p>Guidance on obtaining CIC records, including the declaration, articles of incorporation, bylaws, and rules & regulations; The rights of a CIC related to its ability to enforce its covenants, bylaws and rules & regulations; and Issues related to Declarant control, disclosure of information and documentation and conflicts of interest.</p>
Homeowner Rights & Responsibilities
<p>Information about the financial concerns related to living in and operating a CIC, including assessments, accounting, budgeting, insurance, audits and reserves; Maintenance responsibility and neglected upkeep of the community, major community repairs, and community safety issues; and Responsible governance policies, rules and regulations, and community specific issues including but not limited to parking and architectural review determinations.</p>
HOA Operations and Governance
<p>Practical guidance on handling disputes, including the use of alternative dispute resolution; Election and quorum issues, as well as the use of proxies, and election monitoring; Meeting issues, including: notices, minutes, owner's meetings, board meetings and executive sessions, as well as meeting procedures and best practices in running a meeting; Communication issues including membership lists, newsletters and community websites; Management and operations of self-managed CICs; and Harassment, discrimination, intimidation and retaliation concerns in the community.</p>

Complaints

During the period between January 1, 2020 and December 31, 2020, the Center received 960 complaints regarding issues and concerns related to the governance of, living in, or working with a CIC. These complaints were received by the Center through a variety of means, including online submission via the Center's website¹⁸, email, phone call and written correspondence via U.S. mail.

Despite several instances of disclaimers stating a lack of regulatory oversight (on both the Center's website, as well as on the Center's complaint form¹⁹), upon submission of a complaint, many complainants were surprised to learn that the Center does not have any jurisdiction over the enforcement of a CIC's governing documents or CCIOA.

¹⁸ <https://dre.colorado.gov/hoa-center>

¹⁹ <https://drive.google.com/file/d/0B1VD36mBqe1ES1V5YmpXbVhsdFE/view>

As shown in figure 6.1, there has been an increase from 662 complaints in 2019 to 960 complaints in 2020, a 45% increase. This increase may be due to several factors, including ramifications of the pandemic.

One area of complaints where the Center saw an increase from 2019 is in the area of communication with homeowners. This may be, in part, due to the uncertainty of CICs regarding their ability to safely hold in-person meetings. Another area of concern in which there was an increase is regulatory non-compliance. These are issues relating to requirements found in the CCIOA and Nonprofit Act, along with any other relevant local, state or federal law, rule, or regulation.

Many inquiries and complaints received from homeowners and board members expressed concern related to the holding of the required annual meeting. These concerns were directly related to the pandemic and the seemingly conflicting requirements that an annual meeting be held pursuant to CCIOA²⁰, and the various public health orders²¹ prohibiting the gathering of groups. These issues were complicated even more so by the fact that many board members and active members in CICs expressed confusion and being uncomfortable with the technology necessary to hold remote meetings. While both the Center and statewide community association law firms developed helpful resources for board members and homeowners regarding the holding of remote meetings, these resources did not fully develop until later in 2020, leaving many CICs with the choice of holding an in-person meeting in violation of health orders, or post-postponing the annual meeting. Many chose to postpone.

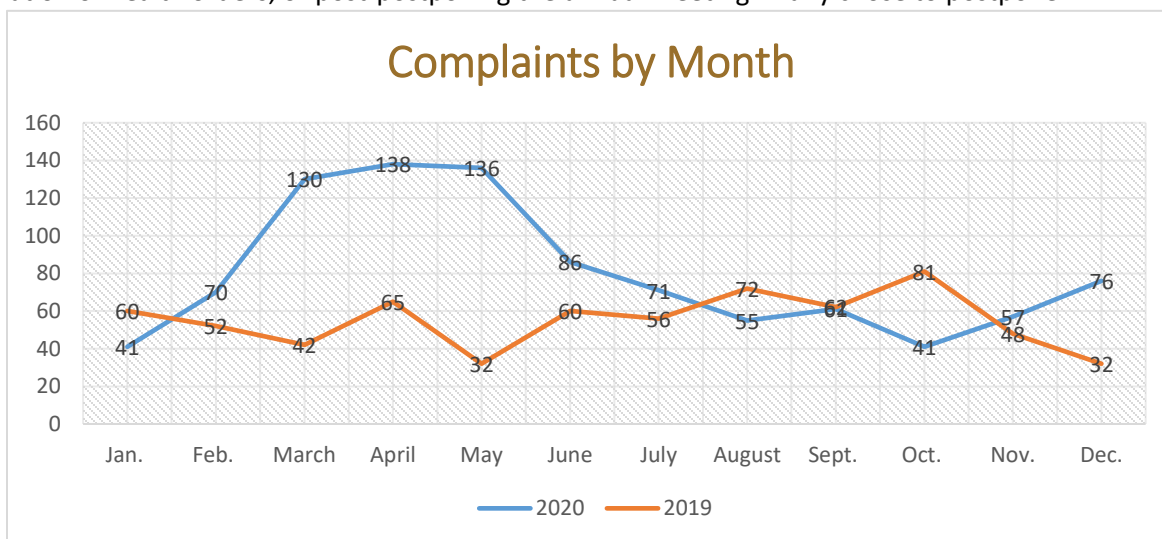


Figure 6.1 Complaints by Month

6.1 Complaint Origination

In order to better understand the data, the Center categorizes complaints into several categories. As shown in figure 6.2, the vast majority of complaints are from planned communities. These are typically single family homes communities, but may also be mixed use communities including some commercial properties. Figure 6.3 demonstrates the number of complaints received from each region of the state.

²⁰ Colo. Rev. Stat. §§ 38-33.3-308(1) 2020

²¹ <https://drive.google.com/file/d/1ZeHik4-YQxDJqldgFvc5yqheqIZpdVTU/view>

As with last year, Denver, the surrounding area and the Front Range had the highest incidence of complaints. However, in 2020 the Center saw an uptick in complaints from more rural areas such as Northwest Colorado and South Central Colorado.

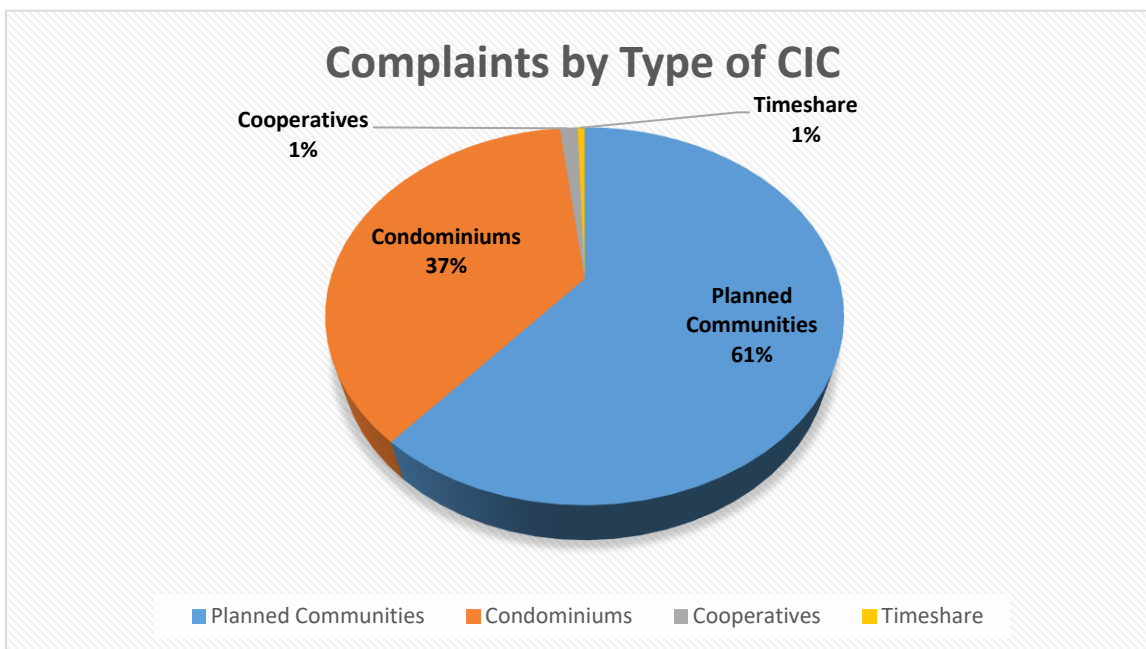


Figure 6.2 Complaints by Type of CIC

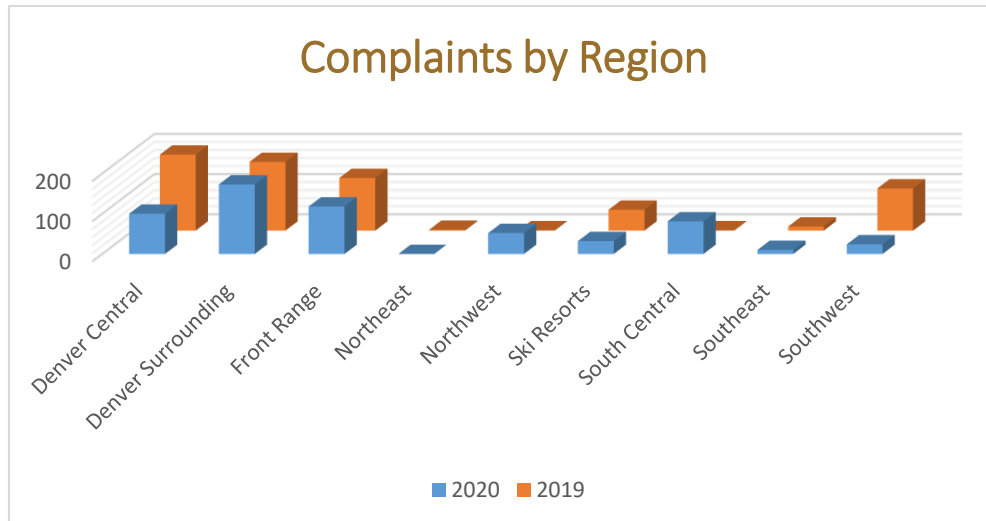


Figure 6.3 Complaints by Region

Complaints by CIC size, illustrated by figure 6.4, shows that an overwhelming majority of complaints come from CICs with between 101-500 units. This is likely a result of most CICs in the state falling into that category of size, rather than a specific issue associated with CICs of that size.

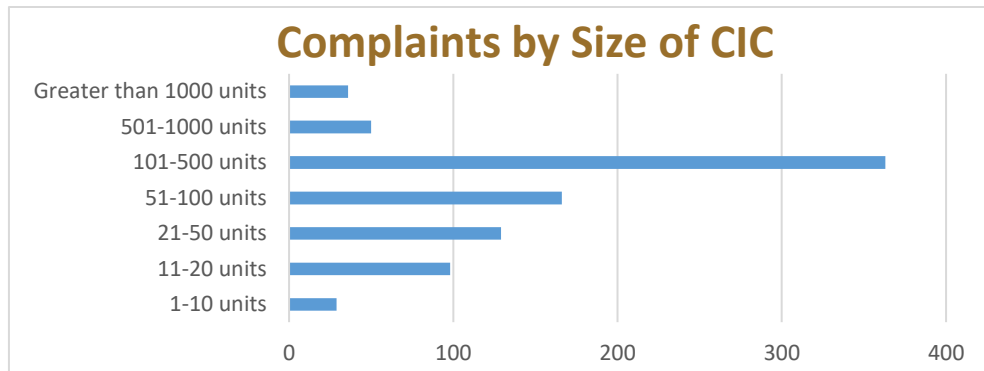


Figure 6.4 Complaints by Size of CIC

In figure 6.5, we see a breakdown of complaints by respondent. Most complaints included information regarding issues solely with the Board. At least a third of the complaints the Center received included information regarding issues with the manager or both the manager and the Board.

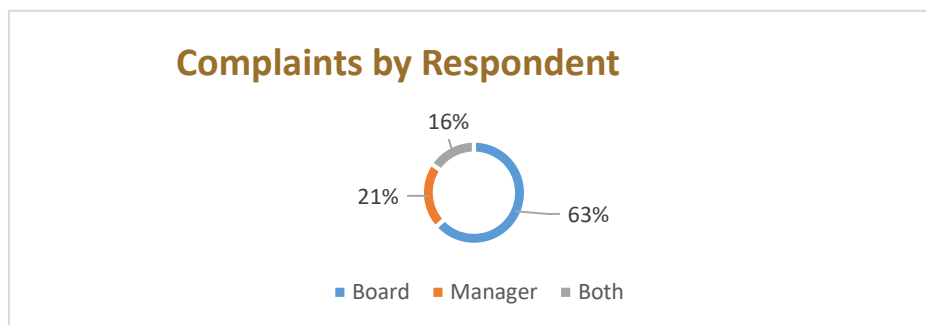


Figure 6.5 Complaints by Respondent

6.2 Complaints by issue

Each complaint received by the Center is reviewed for the issues and concerns therein. Each issue or concern is then categorized into one of the 22 issues listed in figure 6.6. During 2020, the issue that was most frequently complained about to the Center relates to communication between homeowners and the Board. This could be anything from a failure to properly notice a meeting; failure to provide notice of a violation; failure to respond to requests for information; and even failure on part of a homeowner to respond to requests from the Board. While most of the complaints received by the Center, including those regarding communication, tend to be from homeowners, the Center accepts complaints from all parties appurtenant to CICs.

In addition to homeowners and Board members, the Center regularly received complaints from real estate brokers and other real estate professionals. One of the most frequently complained about issues from brokers is in regard to the provision of governing documents during a real estate transaction. These complaints are included in the “Regulatory Compliance” category, as section 7 of the Colorado Real Estate Commission’s Contract to Buy and Sell Real Estate (Residential)²² (“CBS”) specifically requires sellers to provide certain CIC documents. If the seller is not in possession of the most current set of documents listed in section 7 of the CBS, then they must request them from their CIC. The Center

²² <https://drive.google.com/file/d/1gDxeo6wRK0Cd9Dgg1JNzllm9t-cBYU7K/view>

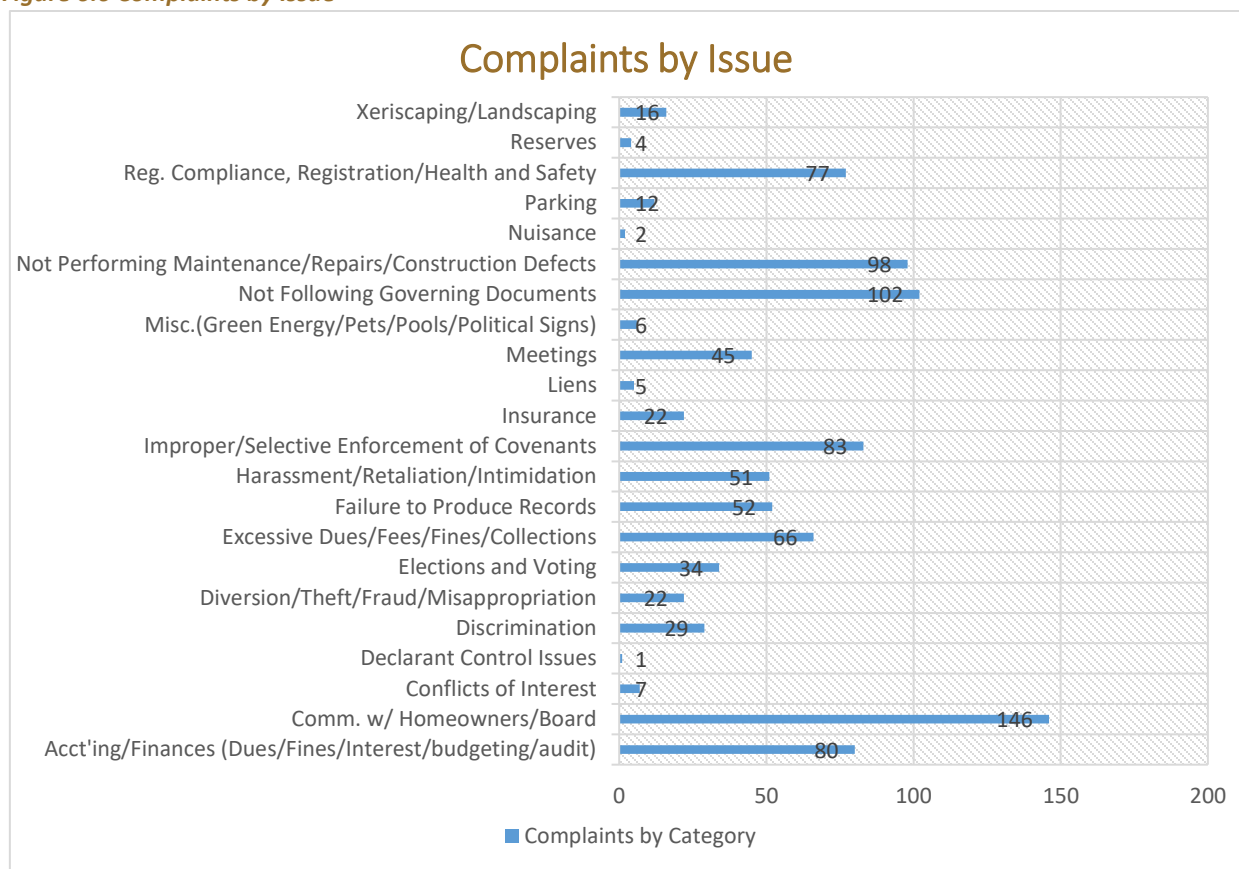
frequently hears from brokers and title companies who are experiencing difficulty in obtaining these documents, even after sellers have allegedly properly requested them.

Other areas in which there have been a high number of complaints received by the Center include issues related to not following governing documents and not performing maintenance. Many of the issues related to not following governing documents have to do with complaints concerning the alleged difficulty or inability to receive a hearing in front of the Board to appeal a violation notice. With regard to complaints concerning alleged failure to perform maintenance, in speaking with many of those individual complainants, several took issue with the perceived unsatisfactory nature of the maintenance or repair, rather than a total failure to complete the work.

Improper or selective enforcement of covenants is another issue in which the Center has received a substantial number of complaints. In many of those complaints, the complainant includes information to indicate that the allegation is based on the observation of another member in the community (whom the complainant believes is engaging in similar conduct) which the complainant believes has not also received a violation notice.

Although the HOA Officer frequently engages in discussion with complainants regarding the circumstances surrounding their complaints, the lack of jurisdiction to formally investigate any complaint hinders the Center's ability to come to any definitive conclusions as to the causes of any given complaint. As such, the Center relies solely on the information provided in the complaints as well as any follow up correspondence with the complainant to reasonably categorize and report on the issues and concerns contained in the complaints it has received.

Figure 6.6 Complaints by Issue



Accomplishments & Objectives

7.1 Review of 2020

In 2020, the Center focused on education and outreach through providing timely and relevant monthly advisories and quarterly training opportunities. In addition to presenting monthly HOA Forums, the Center placed a priority on one-on-one assistance via phone calls and emails with homeowners, Board members and other interested parties. By providing timely responses to each inquiry and inviting consumers to reach out regularly, the Center is confident that it has created greater accessibility to HOA information and education.

The Division also redesigned its website in 2020, including the Center’s homepage and related pages²³. In its effort to serve as a resource for consumers to understand their basic rights and duties, the Center created a central database of resources relevant to living in and governing a CIC. This database includes

²³ <https://dre.colorado.gov/hoa-center>

presentations and publications by the Center; relevant local, state and federal laws; information regarding free and reduced cost legal services; information regarding alternative dispute resolution and several other miscellaneous resources to better assist homeowners and Board members in CICs.

While the pandemic has limited the Center in its ability to travel the state in order to present in-person forums, it has made excellent use of technology to present regular webinars on matters such as dispute resolution, budgeting, CIC records and more. In addition to a new website, the Center is now also prominently featured on the Division's new YouTube channel and offers more than 25 videos on a variety of HOA related topics.

7.2 Goals for the Office in 2021

As the Center continues to strive to provide consumers with access to information and education related to CICs, it will endeavor to expand its current outreach initiatives. Once public health orders permit, the HOA Officer will once again travel to different parts of the state to hold HOA Forums and discuss important issues with consumers. The Center also plans on expanding its training material content to better assist Board members, CAMs and other HOA volunteers in navigating the Division's online services, especially to register and renew their CIC with the Division. Finally, the Center hopes to begin on a new initiative in 2021 involving Spanish language outreach. With nearly 12% of Colorado's population living in households in which Spanish is spoken²⁴, the Center hopes to greatly expand its library of resources to include Spanish language material.

²⁴ <https://statisticalatlas.com/state/Colorado/Languages>