Applicability of CCIOA

All, Some, or None

and Why it Matters

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Vocabulary for Today

- **Colorado Common Interest Ownership Act ("CCIOA")**
  - Colorado State Law Governing Common Interest Communities
  - C.R.S. §§ 38-33.3-101 to -401
  - For this Presentation:
    - § 101 = C.R.S. § 38-33.3-101

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Vocabulary for Today

- **Common Interest Community ("CIC")** – Real Estate Described in a Declaration that also Requires the Owner to Pay for Expenses Related to *Other* Real Estate.
  - Three Types of CICs
    - Condominiums
    - Cooperatives
    - Planned Communities

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Vocabulary for Today

- **Condominium**
  - Common Areas are Owned Jointly and Severally by the Individual Unit Owners

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Vocabulary for Today

- **Cooperative**
  - All Real Property Owned by Ass'n
  - Owners' Membership in Ass'n Entitles them to Exclusive Possession of a Unit
  - NOT a Focus of Today's Presentation

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Vocabulary for Today

- **Planned Community**
  - CIC that is Not a Condominium or Cooperative (Any Common Areas Are Owned by the Association)

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Birth of CCIOA

- CCIOA - Effective on July 1, 1992
- Applies to CICs
- Colorado Constitution (Art. II, § 11) Prohibits Retrospective Laws
  - Two Part Test
    - Vested Right?
    - Balancing Vested Rights vs. Public Po

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Primary Exceptions to CCIOA

- Non-CIC Communities
- “Pre-CCIOA” Communities
- Small or Limited Exp. Planned Communities

Other Exceptions to CCIOA

- Large Planned Communities
- Non-Residential Planned Communities
- Out-of-State Common Interest Communities
- Cooperatives (Treated Similarly to Planned Communities)

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Is Your Community a CIC?

- CCIOA Defines Common Interest Community ("CIC") as:
  - 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.

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Is Your Community a CIC?

- Is there a Valid Declaration?
  - At Minimum, a Valid Declaration Requires:
    - Legally Sufficient Description of Real Property;
    - Recorded in Real Property Records; and
    - Approved by All Owners of the Real Property.

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Is Your Community a CIC?

- Is there a Valid Declaration?
  - If Recorded After July 1, 1992, It Must Also Have:
    - Notarized Signatures from All Owners of the Real Property;
    - The Name of the Common Interest Community and Association; the Name of Each Person Executing the Declaration;
    - For a Condominium, Substantial Completion Certification from Engineer, Surveyor, or Architect;
    - Statement of the Maximum Number of Units;
    - Unit Boundaries
    - Allocated Interests
    - A Plat or Map

Is Your Community a CIC?

- Does the Declaration Obligate You to Pay for Other Real Estate's Expenses?
  - Common Areas?
    - If So, It is Almost Certainly a CIC, Regardless of Whether the Original Declaration Expressly Requires Payment of Assessments. (*See Evergreen Highlands Ass'n v. West*,73 P.3d 1 (Colo. 2003))
  - Mandatory Payments?
    - If so, It is Almost Certainly a CIC, Regardless of Whether It Has Common Areas. (*See Hiwan Homeowners Ass'n v. Knotts*, 215 P.3d 1271, 1273 (Colo.App. 2009))

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Is Your Community a CIC?

- Example of Non-CIC:
  - “Voluntary Membership” Associations
    - Single Family Home Community
    - Covenants & Restrictions
    - No Common Area
    - Owners & Ass’n Have Enforcement Rights
    - Ass’n Funded by Voluntary Assessments

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Is Your Community a CIC?

- Example of Non-CIC (Maybe):
  - "Party Wall" Community (a/k/a Denver Rowhouses)
    - Multi-Unit Building(s)
    - Party Wall Agreement
    - Covenants & Restrictions
    - No Common Area
    - Cross Easements Galore (Sewer, Access, Use)
    - Owners Have Enforcement Rights
    - No Association Established
    - Might Really be a CIC

Pre-CCIOA Communities

- "Pre-CCIOA" Communities
  - Declaration Recorded Prior to 7/1/1992
  - Applicable to all Condominiums, Cooperatives and Planned Communities
- Significant Portions of CCIOA are Applicable

Pre-CCIOA Communities

- Notable Inclusions:
  - Separate Title and Taxation (§ 105)
  - Public Policy Restrictions (§ § 106.5 to -106.8)
    - Energy Efficiency Measures
    - Political and Patriotic Expression
  - Enforcement Limitations/Powers (§ 123)
  - Public Disclosures Required (§ 209.4)
  - Responsible Governance Policies (§ 209.5)
  - Amendment of Declaration (§ 217) (Partial)
  - Organization of Association (§ 301)

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Pre-CCIOA Communities

- Notable Inclusions . . . Continued:
  - Powers of Association (§ 302) (Partial) (Subject to Dec.)
    - Adopt & Amend Bylaws, Rules, and Regulations
    - Adopt Budgets & Collect Assessments
    - Hire Managing Agents; Enter Contracts
    - Management Contract Terminable for Cause Without Penalty
    - Regulate the Common Elements; Charge Fees for Use of Same
    - ARC Decisions Must Not be Arbitrary or Capricious
    - Collect Late Fees, Attorney Fees, & Legal Costs
    - Indemnify Board & Officers
    - Fines for Violations
    - Litigate

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Pre-CCIOA Communities

- Notable Inclusions . . . Continued:
  - Board Powers & Duties (§ 303) (Partial):
    - All Directors Get the Same Information
    - Committee Members Meet Same Qualifications as Directors
    - Budget Ratification Process (Unless Capped)
    - Audit (1/3 of Owners; Budget ≥ $50k)

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Pre-CCIOA Communities

- Notable Inclusions . . .Continued :
  - Meetings (§ 308)
  - Voting (§ 310) (Partial)
    - Multiple Owners
    - Secret Ballot Election of Directors
    - Proxy Voting
    - Good Faith Review of Votes/Ballots
  - Lien for Assessments (§ 316)
  - Association Records (§ 317)
  - Registration (§ 401)

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Pre-CCIOA Communities

- Notable Exclusions:
  - Unconscionable Agreement Avoidance Power (§ 112)
  - Creation of Common Interest Community (§ 201)
  - Unit Boundaries (§ 202)
  - Contents of Declaration (§ 205)
    - Development rights
    - Restrictions on Use, Occupancy, and Alienation of Units
    - Provisions re Notice to Owners
  - Allocation of Allocated Interests (§ 207)
  - Limited Common Elements (§ 208)
    - Specify Allocations in Declaration
    - Re-Allocation Procedure
  - Plat & Map Requirements (§ 209)
  - Alterations & Relocation of Boundaries Between Units (§§ 211-212)
  - Termination of CICs (§ 218)

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Pre-CCIOA Communities

- Notable Exclusions:
  - Ass'n Power & Procedure to Convey or Encumber Common Elements with Approval from 67% of Owners (or more, if specified in Declaration). ((§§ 302(h) and 312)
  - Ass'n Power to Grant Easements, Licenses, and Concessions through or Over Common Elements (§ 302(i))
  - Ass'n Power to Assign Future Income, to the Extent Provided by Declaration (§ 302(n))
  - Prohibition Against Limitations On Ass'n Power to Deal with Declarant (§ 302(2))
  - Board's Default Power to Act on Association's Behalf (§303(1)(a))
  - Limitation of Liability for Directors (§ 303(2))
  - Insurance (§ 313)
    - Who Insures What in CIC with Horizontal Boundaries
    - Waiver of Subrogation
    - Allocation of Deductible
  - Assessments (§ 315) (Partially Applicable re: Escrow Agreement)
    - Misconduct
    - Allocated Interests

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Electing Treatment Under Full CCIOA?

- Pre-CCIOA Community Can Elect Treatment under Full CCIOA pursuant to C.R.S. § 38-33.3-118
- Vote Must Occur at Meeting of Owners
- Meeting Notice Must Inform Owners of Vote to Elect Treatment Under CCIOA and Include Full Copy of CCIOA
- Approval from Owners Holding 67% of the Votes Present in Person or by Proxy (Must have Quorum)
- Record Statement of Election with Clerk & Recorder
- Alternative to this Process?

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Electing Treatment Under Full CCIOA?

- Pre-CCIOA CICs Could Amend Declaration to Mirror *Most* of CCIOA's Inapplicable Provisions.
  - Typically Requires Approval from 67% of All Owners

- Electing Treatment Under CCIOA Allows Associations to "Modernize" their Communities by Incorporating the Full CCIOA with a Relatively Low Approval Threshold
  - 67% of Owners Voting at Meeting

Electing Treatment Under Full CCIOA?

- Electing Treatment under CCIOA Allows Associations to Implement Changes that they May Be Unable to Accomplish through a Declaration Amendment
  - Avoiding Unconscionable Agreement (§ 112)
  - Incorporate CCIOA's Unit Boundary Definitions (§ 202)
  - 1-Year Statute of Limitations for Challenging Declaration Amendments under (§ 217)
  - Facilitate Merger or Consolidation under (§ 221)
  - Insurance Policy Requirements in (§ 313(4))

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Small Planned Communities

- Planned Communities of Less Than 10 Units (if created before July 1, 1998) or 20 Units (if created on or after July 1, 1998);
- Not Subject to Any Development Rights
- Only Subject to §§ 105 to -107
- Pre-Existing Small Planned Communities (created before July 1, 1992) Surrender Their “Small” Status if They Use CCIOA to Amend Their Declaration (see § 119)

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Limited Expense Planned Communities

- Declaration Limits Annual Assessments to No More than $400
  - Exclusive of Insurance Premiums & Optional User Fees
  - CPI Adjusted from July 1, 1998
- Only Subject to §§ 105 to -107
- Pre-Existing Limited Expense Planned Communities (created before July 1, 1992) Surrender Their "Limited Expense " Status if They Use CCIOA to Amend Their Declaration (see § 119)

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Limited Expense and Small Planned Communities

Only Subject to:

- § 105 . . . Separate Titles & Taxation
- § 106 . . . Local Ordinances Apply
- § 106.5 . . . Public Policy Measures
- § 106.7 . . . Energy Efficiency Measures
- § 106.8 . . . Electric Vehicle Charging Systems
- § 107 . . . Eminent Domain

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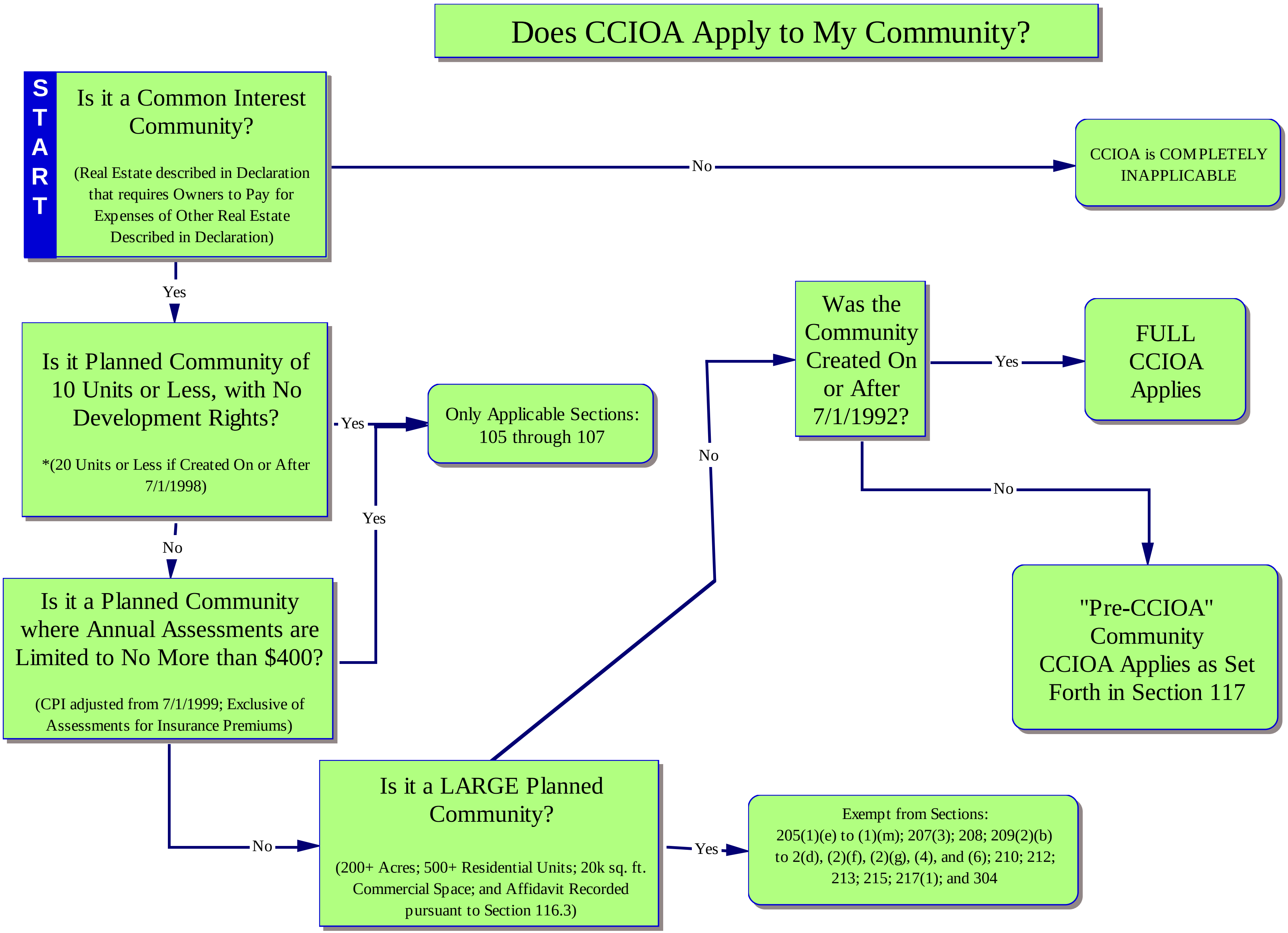
Limited Expense and Small Planned Communities

- Advantages:
  - Avoid CCIOA Requirements regarding:
    - Collection & Enforcement Limitations
    - Responsible Governance Policies
    - Construction Defect Actions
    - Budget Ratification
    - Record Inspection
    - Meeting Notices
    - Open Meetings

Limited Expense and Small Planned Communities

- Disadvantages:
  - No Benefit of CCIOA's:
    - Owner Representation Provision for Litigation
    - No Special Lien Priority
    - Challenges with Amendments
      - No Limitation on Owner Approval Threshold
      - No Presumed Approval for Mortgagees
    - No Statutory Right to Recover Attorney Fees or Costs
    - Insurance Provisions


Does CCIOA Apply to My Community?
START
Is it a Common Interest Community?
(Real Estate described in Declaration that requires Owners to Pay for Expenses of Other Real Estate Described in Declaration)
No
CCIOA is COMPLETELY INAPPLICABLE
Yes
Is it Planned Community of 10 Units or Less, with No Development Rights?
*(20 Units or Less if Created On or After 7/1/1998)
Yes
Only Applicable Sections: 105 through 107
Yes
No
Is it a Planned Community where Annual Assessments are Limited to No More than $400?
(CPI adjusted from 7/1/1999; Exclusive of Assessments for Insurance Premiums)
No
Is it a LARGE Planned Community?
(200+ Acres; 500+ Residential Units; 20k sq. ft. Commercial Space; and Affidavit Recorded pursuant to Section 116.3)
Yes
Exempt from Sections: 205(1)(e) to (1)(m); 207(3); 208; 209(2)(b) to 2(d), (2)(f), (2)(g), (4), and (6); 210; 212; 213; 215; 217(1); and 304
No
Was the Community Created On or After 7/1/1992?
Yes
FULL CCIOA Applies
No
"Pre-CCIOA" Community CCIOA Applies as Set Forth in Section 117