

Quandary for CICs

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Condominiums have been taking off in Colorado, fueled by the availability of capital, continued low interest rates and soaring prices like the recent sale of a new Cherry Creek residential unit at a record price exceeding \$500 per square foot. Both residential and commercial condos are benefiting from this popularity, with conversions being further stimulated by high vacancies in those real estate markets.

Condos are one of three categories of ownership in a class of properties called Common Interest Communities, or CICs. All residential CICs in Colorado are regulated by the *Colorado Common Interest Ownership Act* (CCIOA), which was adapted in 1992 from the Uniform Common Interest Ownership Act originally published in 1982. Knowledge of these acts, legally adopted by only 7 states at the time of this writing, has been slow to filter into the professional community, with the inevitable result being disputes.

One troublesome area centers on the measurement of square footage in residential properties. The CCIOA explicitly defines unit boundaries, and, by inference, the Unit Areas of condos. When figured to these boundaries, Unit Areas are significantly smaller than the Living Areas customarily calculated for residential properties. In one recent dispute involving a residential condo in a high rise building, the seller's documentation showed a Living Area of 2,233 square feet of living area while the CCIOA Unit Area was measured at only 2,027 square feet, a difference of 206 square feet or 10%. In an industry where the maximum measurement tolerance is 2%, this is a huge difference!

Historically, Living Area has been computed to the outside face of exterior enclosing walls and to the centerline of walls separating living units in multi-family properties. The National Association of Home Builders Research Council publishes a voluntary national standard (ANSI Z765.1-1980) defining Living Area and it is used in many residential properties. However, use of this standard is only voluntary. It is not a law.

In contrast, the CCIOA, otherwise know as CRS 38-33.3, contains explicit descriptions on unit boundaries. This is the first time in Colorado that measurement of residential floor areas has been statutorily defined. The perimeter unit boundaries are generally the interior face of unfinished studs or concrete structure. Any square footage outside these perimetric boundaries is not part of the unit but is instead designated as common areas. The areas of columns, ducts, flues and the like running through the unit are also common areas, and are also excluded from the unit area. These smaller perimetric boundaries and exclusions lead to Unit Areas of condos that are significantly smaller than their Living Areas.

The CCIOA applies only to residential CICs, although commercial CICs may elect to be governed by it. Nonetheless, with high-end condos currently selling for \$400 per square foot, a difference in floor area of only 200 square feet can translate into a difference in selling price of \$80,000 an amount that many people will argue over.

This leaves developers in a bit of a quandary: Is it better in residential CICs to quote the customary Living Area or the new statutory Unit Area? Some states have side-stepped this issue by requiring square footages to be removed from any CIC marketing materials, and many developers do likewise. This is one approach, but sooner or later the issue of “how big” comes up in most real estate transactions. The Living Area measure is ensconced in current practices, is used in multiple listing service data, and is the basis for most valuation and tax appraisals, but it is no longer the statutory measure of floor area in residential CICs. A purchaser can easily argue with the support of the CCIOA that the customary Living Area measure exaggerates the space in his unit. To avoid a dispute, a developer would be wise to quote CCIOA Unit Area when the subject of square footage is raised.

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