



Coloradans for Metro District Reform

1/8/2024 Metro District Task Force Meeting Response

[Coloradans for Metro District Reform](#) (CMDR) are citizen volunteers who have experienced abuses caused by the lack of accountability in developer-run metro districts. Our goal is to educate, identify opportunities for reform, and advocate for meaningful legislation that protects residents from abuses.

CMDR has helped residents in over 100 metro districts better understand their districts through analysis of those districts' legal documents. We also work to support the transition of metro district boards to resident control so those boards can restore residents' right to vote and establish accountability for government taxation and spending by the developer.

Below is CMDR's response to the third meeting of the Metropolitan District Homeowners' Rights Task Force held January 8, 2024. We welcome any requests to support the claims below or present our position to the Task Force.

This meeting's intended topics were "Foreclosure Practices" and "Processes by Which a Metro District... Could Transition to a Common Interest Community". The second half ended up distinguishing metro districts from HOAs rather than discussion of transition to a Common Interest Community (aka an HOA). However, the presenters and panelists made several important points worth noting.

Foreclosure Process

The first speaker, David Firmin of Altitude Community Law, detailed the definitive process for foreclosing on a resident's home for failing to pay Metro District fees and taxes. He explained that a Metro District has the power to take away a resident's home if the homeowner fails to pay the fees and/or taxes assessed against the property by the District. What was not covered is that the bond investor can also initiate foreclosure proceedings on a property; each and every bond prospectus goes to great lengths to explain to the bond investor how to foreclose on individual delinquent homes. This is a critical point. Industry advocates repeatedly assert that all risk of financial failure is on the bond investors, not the homeowners. In fact, the homeowner, not the bond investor, is ultimately at risk.

MaryAnn McGeady, Task Force member and industry attorney, noted that "the foreclosure process is working very well". She explained that very few homes ever actually foreclose. Of course that is because the homeowner will do everything he or she can to preserve their home and investment in the home. Developers and bond investors know this and it is why metro district bonds are such an attractive investment.

Task Force member Natascha O'Flaherty expressed concern about master-servant governance and foreclosure; the master district (controlled by the developer) can foreclose on a resident's property in the course of enforcing covenants as stipulated in the master-servant intergovernmental agreement (IGA). Ms. McGeady responded that Metro Districts can terminate intergovernmental agreements establishing master

Metro District-managed Covenants. Notably, that same rationale applies to termination of other “agreements” entered into by the developer with himself. Such “agreements” commonly stipulate that residents must pay any costs the developer determines they should. Other “agreements” force residents to pay all their District tax revenue to the Developer (or their facsimiles) who will decide how to spend that revenue.

Brian Matise noted that consumer-friendly HOA protections passed by the legislature do not apply to Metro Districts. Metro District residents, for instance, do not benefit from the protections built into the Colorado Common Interest Ownership Act (CCIOA). Natashca O’Flaherty pointed out this circumvents the protections granted by the legislature to HOA residents. Ms. O’Flaherty also remarked on the danger in allowing developer-controlled master districts to force a foreclosure on a resident’s home. These points are well-made and are undergirded by a fairly common-sense reservation: if metro districts are going to enforce covenants, the enforcement of those covenants *should* be bound to similar or higher standards than HOA covenant enforcement. The argument that because foreclosures *may* be rare, there need not be foreclosure protections for homeowners is a bad one.

Process for Transitioning Metro Districts to Common Interest Community

The speakers were Trisha K. Harris and Elisabeth A. Cortese from the development industry firms of panelists Jennifer Tanaka and MaryAnn McGeady respectively. As noted by panelists, the speakers did not actually cover the process of transition but instead compared and contrasted Metro Districts and HOA’s. Takeaway: Metro districts are entirely different from HOA’s. Principally a metro district is a government; an HOA is a private association created by a private agreement. Metro districts can enforce community covenants but it’s questionable if that’s advisable.

One sticking point in particular was public access to metro district improvements. HOAs can build amenities that are exclusive. Metro Districts (being governments) are supposed to construct public goods that are not excludable. If a Metro District were to transition into an HOA... what happens to the amenities?

Right now, once the developer debt is paid off, there is no reason for a Metro District to continue and the statutes expect it will dissolve. If the Metro District is (for all intents and purposes) the HOA, the Metro District will become a permanent fixture.

Lack of Resident Position in the Task Force

After the expected presentations and discussions concluded, the facilitator asked the Task Force members how they felt about the overall process/format thus far. Representative Parenti, Ms. O’Flaherty, and Mr. Matise all remarked about the failure to allow resident input on the metro district issues being discussed. The Task Force has had three of its six meetings and all presenters have been industry representatives. In fact, *half* of the presenters have been lawyers from the firms who have two members sitting on the panel.

We concur. CMDR and residents throughout Colorado have been denied access to the Task Force. Residents have not been invited to speak and their materials appear to not have been shared with members. CMDR suspects some of these materials have been dismissed as “opinion”. While resident stories may be subjective (that’s what lived experience *is*), that does not mean they are mere “opinion” and if the task force cannot find **any** resident testimony that meets their standards, that in and of itself is telling.

Affordability

The false myth that Metro Districts “improve housing affordability” was repeated and appeared to be generally accepted by the Task Force. This is concerning. There has been no data provided to the Task Force to support this claim. Unfortunately, there is nothing about Metro Districts that makes housing more affordable. Studies by the cities of Westminster and Erie demonstrate that homes within Metro Districts are less affordable than those without. The uncontested, oft-repeated claim is: repaying the cost of infrastructure with Metro District financing “stretches out” infrastructure costs.

The theme being promoted on the panel is that the problem is not with metro districts. The problem is with the homeowners. This Task Force was not formed because all is well - it was formed because there are pervasive problems with metro districts and the Task Force should hear from the people impacted by those problems.

[Youtube Recording of 1/8/2024 Task Force Meeting](#)

[Link to CMDR's Response to the 12/5/23 First Meeting of the Task Force](#)

[Link to CMDR's Response to the 12/18/23 Second Meeting of the Task Force](#)

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