

## DRAFT

### Colorado HB 22-1137

Fines, [HOA Foreclosures\\*](#), Debt Collection Policy and Dispute Resolution\*  
Comments to be considered in addressing HB 22-1137 content changes  
Comments by the Colorado HOA Forum [www.coloradohoaforum.com](http://www.coloradohoaforum.com)

Suggested Revisions to HB 22-1137: details are important and provide a systematic solution avoiding unintended consequence, ambiguities and loopholes. The following comments are intended for inclusion in any Bill written to enhance HB 22-1137 and HOA debt collection policies. Items are subject to consolidation but content be retained.

**Note, comments are new items and/or provide detail to HB22-1137 original content.**

#### **General Administration:**

Fines and fees can't be assigned interest charges. Interest charges can only be assessed to a homeowner on delinquent assessments and on debt incurred by the homeowner debt resulting from their actions/behavior or non-compliance with a violation of covenants in which the HOA expended its' funds to correct.

Foreclosure can't solely be based on fines and/or fine related charges including notifications, attorney fees, letter issuance costs or administrative fees incurred by or charged to homeowner in notification and collection process. Unpaid fines and related fees and overhead charges can't be part of any foreclosure action.

Any attorney fees, letter issuance costs or other costs incurred in the four-step notification and collection process for fines can't be charged to the homeowner, except for the \$35 administrative fee described in this section, and such non-allowable costs incurred by the HOA can't be pursued as a separate collection/legal action against the homeowner.

The start date of the process to enforce a violation of the Declaration or rules through a fine begins with the first notification to the homeowner. The HOA will pay all costs of notifying a homeowner about a violation in the first and second notification with the exception that any required certified letters or

correspondence or extraordinary costs incurred to contact the homeowner can be charged to the homeowner.

Notifications will be provided in either English or Spanish. HOAs must survey all homeowner at least once a year for the preferred language of notification and apprise all new homeowner of their obligation to inform the HOA of their preference. Costs incurred by the HOA to meet other language requests will be paid for by the homeowner.

The assessment of a fine and creation of the debt to the HOA in the HOA's financial records will be completed with the issuance of the third notification letter. Such debt can not exceed the principle amount of the fine as defined in the HOA governing documents plus certified mailing and/or special delivery charges plus a \$35 charge related notification preparation. No attorney fees or collection costs will be posted to the homeowner's account related to issuing the third and fourth notifications. The cumulative, total amount of the fine representing allowable administrative fees, the original amount of fine and allowable doubling of the fine in the event a cure date of the third notification is not met must be posted to the HOAs accounts receivable. Any subsequent and post-fourth notification letter will be added to the homeowners debt and recorded in the HOA financial records.

Notification costs for which the homeowner is responsible include: any certified mailing charges that the HOA optionally elects to assess the homeowner in the first and second notification letters; charges up to \$35 per violation to cover the cost of preparing and delivering the third and fourth notification letter; the principle amount of fine from the HOAs fine amount schedule; and double the amount of the original fine if the violation is not cured upon the cure date in the third letter and if not cured by the cure date in the third letter the home owner can again be assessed another double the amount of the original fine if not cured by the cure date in the fourth notification.

The total amount of fine for any violation can't exceed \$500 that includes: amounts related notification letter preparation and delivery set at no more than \$35 in each of the third and fourth notification; the initial amount of fine as a

result of the violation not being cured by the date indicated in the second notice; an amount equal to twice the original fine assessed when the violation is not cured by the cure date in the third notice; and an amount equal to double the original fine that is assessed when the cure date on the fourth notice is not met by the homeowners. In determining the total amount of debt incurred by the homeowner as a result of the HOA enforcing their rights to enforce the rules, covenants, restrictions and controls stated in the HOA governing documents the homeowner is not responsible throughout the four step notification process stated in this section for any attorney/attorney letters, collection or any other overhead or administrative costs other than certified mailing costs, the \$35 allowable administrative fee for the second and third letters and other reasonable and ordinary costs to fulfill notification delivery from the HOA to the homeowner.

If the cure date on the fourth notification letter is not fulfilled, the HOA can charge the homeowner an additional \$50 to cover the cost to send the unpaid debt to an outside collection agency, lawyer or other party.

Violations of covenants are assigned to individual homeowners. Any violation of covenants and related charges by a rental unit are the responsibility of the homeowner and not the renter. Each violation is independent of any other violation and each violation will be investigated by the Board prior to any issuance of notification.

The HOA can optionally invoke a denial of use of community amenities such as the swimming pool, tennis court, basketball court if after the fourth notice cure date the violation is not resolved and continue denial of access until the fine is considered settled by the HOA.

The HOAs property management company can not be vested with decision making authority independent of Board approval and/or such authority as defined in the HOAs contract with the property management company related to all notification and collection matters. HOA Boards in cooperation with the PMC will administer the covenant enforcement program and only the Board will determine if the fine/violation process, based on evidence of a violation, should commence based on the HOAs collection policy.

Monthly violation statements to homeowners with outstanding violations and related debt will be issued to the homeowner. The HOA can charge the homeowner no more than \$20 for this statement plus the cost to mail/deliver.

A copy of the HOAs fine and collection policy will be delivered to all homeowners once a year via U.S. mail or email.

Each notification will include a description of the violation and the covenant violated, the date of inspection the HOA verified the violation, amount of impending fine and fees impending and assessed to date and with the second notification an offer for the homeowner to present any objection to the HOA as defined in the fine and collection policy. A log of all notification letters will be maintained by the HOA.

As part of the annual HOA registration the HOA will certify they have separate: 1) a fine billing and collection policy 2) an assessment and other debt billing and collection policy. Also, the HOA will confirm they have apprised all homeowners of its' billing and collection policy within the past year.

HOA foreclosures can be pursued for: 1) unpaid HOA assessments or 2) delinquent debt owed to the HOA resulting from the HOA expending funds to correct a homeowner covenant violation or repairs to common property caused by the homeowner or 3) to fix structures or damage caused by the homeowner that present a health or safety issue.

After delinquency of the fourth notification, HOAs can pursue collection utilizing attorneys, collection agencies or the court system.

The HOA must offer the home owner the opportunity to challenge/contest any fine in a hearing or dispute resolution process that is mutually agreed to. The alleged violator will have **5 days after receipt of the second notification** to apprise the Board of their intentions to protest the fine. The hearing options are: 1) the HOA will assign an independent party/homeowner within the HOA to serve as the arbiter to render a decision; if the HOA and homeowner can't agree upon a homeowner arbiter then the use of an outside mediation service will be pursued. If a for profit mediator is agreed to then the mediation cost will be assigned to the

losing party; or a public, no fee mediator may be pursued. The homeowner can dismiss the offer of a hearing with the HOA and take the matter to court. The findings of the home owner arbiter or any mediation service will be considered final and the right to appeal such findings in or out of court is forfeited if a hearing is conducted. The HOA is responsible for their attorney fees in the hearing process. If the HOA doesn't apprise the homeowner of their opportunity to a hearing or refuses to negotiate with the home owner an acceptable process/venue the violation will be considered canceled. If the HOA and homeowner can't agree upon a venue for the hearing, the HOA and homeowner will acknowledge this in writing/email and the fine notification and collection process will proceed to the third and fourth notification letters.

A payment plan must be offered to the homeowner to cure any debt that is not paid off after the fourth notification letter. Only one payment plan will be offered to the HOA and the duration of the payment plan will not extend longer than twelve months. If the homeowner misses a payment then the debt will be handled by the HOA in the same manner as if the debtor missed the cure date in the fourth notice.

All debt collection or other reason for an HOA foreclosure will be reported to the State HOA Office and include: date of foreclosure sale, sale price of home and market value of home, amount of homeowner debt to the HOA upon which foreclosure was based, purchaser of home. The HOA Office will include this information in its' annual report.

Notifications concerning a homeowner violation that can lead to a fine must clearly indicate when the violation becomes a debt owed to the HOA.

The first and second notifications (described herein) to the homeowner of a violation of covenants, controls and restrictions will be served by regular U.S. postal service **and** either an email or telephone call. No certified mail is required on the first or second notice with exceptions noted in this directive. The Third and Fourth notifications will be sent by certified mail **and** either email or a telephone call and **paid for by the homeowner.**

Administrative and add-on fees assessed in the third and fourth notification notices can be **no more than \$35 per notification plus mailing costs.**

HOA awarded court costs and legal fees incurred only after the expiration of the fourth notice cure date are limited to \$750. The exception is any repeat similar violation within 6 months of the original violation being cured will have the total amount of fine limited to \$1500 and the HOA can be awarded up to \$1500 in court costs. A second repeat violation of the same kind can result in the total amount of fine total of \$2500 and court award legal costs up to \$3000. Cure date on any repeat similar violations on the homeowner's behalf will be 14 days after issuance of the first notice and 10 days after the second notice and all add-on and attorney/collection costs for repeat similar violations can begin with the first notice with the total amount not to exceed limits previously indicated. Repeat violations will not require a third and fourth notice but after the second notice and not being cured the HOA will the homeowner of future collection actions including court action and/or the HOA taking action to correct the violation utilizing its own funds and collecting such expenditures from the homeowner.

Homeowners are not limited in amount they can ask for or be award by the court if they are the prevailing/winning party in a court decision.

All fines must be brought to resolution by an HOA within one year of the first violation notice either through payment of the debt and corrective action by the homeowner, through a court action by the homeowner or by agreement between homeowner and HOA or they will be **considered cancelled.**

HOA administrative and other overhead charges and interest can't be assessed no more frequently than monthly or as provided in four-step notification process described here-in.

A homeowner has 15 days after the first notice cure date to request a hearing with the HOA Board to resolve the violation.

Homeowner court challenges for fines, fees or assessment must be completed within 15 days after the second notification cure date. If the homeowner can't arrange for such a court date within this time frame they will be granted an

extension based on the earliest available court date plus 15 days. The imposition of any HOA add-on fees can continue on the third and fourth notices but during any extended deadline to file a court case by the homeowner no such fees and add-ons costs can be added to the total due.

HOAs can assess the homeowner double a fine amount after expiration of the cure period on the second notice but the amount is limited on the total amount of the fine can not exceed limits set forth in this collection policy.

All notifications will be logged by the HOA including date of issuance, where/to who sent, amount of fines and fees assessed/collected in detail, type of violation, homeowner response, notations of any agreements between homeowner and HOA to resolve the violation and actions by the HOA to resolve the violation. filing system/data base will be maintained that allows for retrieval and reporting of all violation notices by name and/or address, status indicator (resolved-unresolved), amounts collected, waivers, and number of notices issued, number in delinquency status (violation not cured within allotted timeframe), active collection activities. HOAs must be able to report on the amounts expended on legal fees in collections, amount of legal fees reimbursed and income from collection activities. HOAs will also be required to report on the number of delinquent fines that have resulted in liens and foreclosure.

Outstanding homeowner debt to the HOA will be documented on the homeowners account statement indicating the initial principle of the debt and any add on fees and cure date and payments.

HOAs are precluded from depending upon fines and fees collection to fund maintenance and administrative responsibilities.

Notifications will be printed in either English or Spanish as preferred to by the debtor. In the absence of an identified preferred language English will be used.

The buyer(s) of an HOA home foreclosure can't be related to anyone on the HOA Board, the HOA management company or any of its affiliated businesses or any persons involved with the HOA business or activities. A home sold through HOA

foreclosure must not be sold for under 75% of its market value minus debt inherited and attached to the property

#### **Four step notification on fines:**

**A four-step fine notification process described herein will be required to be part of an HOA's notification, collection, covenant enforcement, delinquent and fine policy.**

First violation notice: to be issued to the homeowner after the HOA has confirms a violation has been committed. The notice will include date the violation was confirmed, a cure date, which covenant was violated, the amount of the fine if not cured, and that homeowner will be issued a second notice if violation is not cured.

Second violation notice: appries the homeowner that they failed to cure the violation with conditions explained in the first notice. The homeowner will be granted an additional seven days to cure the violation. The homeowner will be apprised that in the event the violation is not cured by the due date in the second notification, that the next notice (third notice) can result in administrative charges of not more than **\$35 plus the amount of fine**. No collection agency, overhead charges, attorney fees or other add-on charges can be assessed with the second notice. The second notice must be sent to the homeowner in the same process identified with the first notice within 5 days of the cure date in the notice in the first letter. The assignment of a monetary amount due (administrative and other add-on charges plus the fine amount) takes place with the third notification. The second notification will advise the homeowner of the opportunity for a hearing and the process to request the hearing.

Third violation notice: appries the homeowner of failure to cure the violation by the cure date in the second notification and can carry administrative charges and add-on charges of no more than **\$35 plus the amount of fine**. The third notification is sent out to the homeowner 5 days after the cure date in the second notice and gives the homeowner seven days after the date in the second notice to cure the violation. The third notice confirms a fine and administrative charges are have been assessed and are due. No attorney fees, collection agency costs,

overhead or other add-on charges can be assessed the homeowner other than the administrative charges of \$35.

Fourth violation notice: apprises the homeowner of failure to cure the violation by the cure date in the third notification, can carry administrative charges up to \$35 administrative processing fee plus amount of original fine and optionally the fourth notice can double the fine. No attorney, collection agency, overhead or add-on costs can be assessed other than the administrative charge of up to \$35. The fourth notification is sent out to the homeowner 5 days after the cure date in the third notification.

If the cure date on the fourth notification is not met by the homeowner they will be notified by the HOA of intended collection action which can include referring the debt to a legal entity or collection agency; offer the homeowner a final chance to set up a payment plan and/or that the HOA may take corrective action to fix the violation and that any expenses incurred by the HOA in their correcting the violation will be considered a separate debt for which the homeowner is responsible. The expenses incurred by an HOA to correct a homeowner's violation will be the homeowner's responsibility and cause the HOA to issue one notification letter with a cure date 14 days after letter issuance for this type of debt. The HOA can assess the homeowner a \$35 administrative fee on the first notice, charge for certified letter costs, the notice will carry an explanation of billing and the HOA can turn the debt over to a collection agency, attorney or other entity for collection if the cure date on the notification is not met and charge the homeowner up to \$75 for such an action; the total amount of the debt will be capped at the amount expended by the HOA to correct the violation plus debt turnover cost up to \$75 plus \$35 administrative cost plus interest charges no greater than 8% per annum simple interest. Attorney or collection agency fees are limited to \$750 if settled out of court or \$1500 if the debtor is taken to court and the HOA is the prevailing party. This type of debt can result or justify foreclosure. Interest charges on debt will be retained by the HOA.

Homeowner payment plans used to settle HOA debt will not extend beyond one year, will only include one payment plan offer and failure to comply with a

payment plan can result in foreclosure or legal action by the HOA to collect such debt in court.

\*Comprehensive foreclosure reform and dispute resolution should be addressed in separate Bills. Comingling these issues with other proposals will not allow for a full and effective list of requirements.

The notification and collection process related to delinquent assessments (aka monthly hoa dues) concerning limits on amounts owed by the homeowner related to letters/notifications should limit attorney costs up to point at which the homeowner either accepts or rejects to payment plan and the homeowner only is offered one repayment plan and if they into non-compliance the debt can proceed to a lien/foreclosure. The total amount of legal fees associated with the HOA filing a lien and foreclosure should have limits and avoid such verbiage as “reasonable”.

HOA non-judicial forecloses must be offered and closed at no less than 75% of the home’s market value less any inherited debt by the winning bidder.

Homeowners must be apprised of alternatives to foreclosure and sources to pursue to preclude foreclosure at least 30 days prior to the foreclosure sale.

Other issues in our HOA foreclosure reform proposal.