

## Final DRAFT

### Colorado HB 22-1137-: suggested content modifications and additions

The Colorado HOA Forum offers comments to legislators on how to effectively write HOA governance issues to ensure the rights of homeowners are balanced with the HOA's ability to govern the community. **The Forum doesn't write legislation but identifies issues for reform and content for reform.** It leaves the task of incorporating its' suggested content into legislation to legislators and their available resources.

**Definitions: 1) administrative charges relate to costs assigned to the homeowner by the HOA for issuance of notification letters in the four step process 2) cure refers to correcting a violation 3) cure date is the due date for the homeowner to cure (correct) a violation 4) Reimbursement debt, debt owed by the homeowner to the HOA that is created when the HOA uses their funds to correct a violation or to complete repairs or other damage as a result of homeowner behavior 5) covenant violation and fines relate to homeowner violations of covenants, controls restrictions or rules indicated in the HOA's governing 6) mail and delivery charges are costs assigned to the homeowner by the HOA to deliver notifications and include certified mail and U.S. mail postage charges but will not include any extra charge to deliver a notification or other correspondence to the homeowner's unit, and more**

**This is a content proposal to ensure issues are addressed in a comprehensive manner to ensure clarity, reduce misinterpretation and ensure enforcement. The verbiage and sentence structure can be rewritten into a Bill but no content should be deleted.**

### The proposal

1. Preclude the sale of a foreclosed home for less than 75% of its appraised value less any debt or other financial obligations inherited by the buyer. Appraised value of the home requires two property appraisals payable by the homeowner. Require notification of first mortgage lenders via certified mail of upcoming foreclosure auction.
2. HOA income from a homeowner in the payment of fines, reimbursements to the HOA for any and all matters, court awards and attorney fees and events will first be deposited in HOA bank account(s) and accounted for by event in the HOAs financial system and is not to be directly posted to any third-party account
3. HOA will collect contact, billing and collection information from new residents and update such information on all unit owners at least once a year and confirm this was completed through the yearly HOA registration process.
4. HOAs will provide all homeowners a copy of the covenants, controls and restrictions, collection policies and maintenance responsibilities at least once a year and confirm completion through the HOA registration process.
5. The maximum duration of any homeowner debt payment plan is one year, only one payment plan per debt, payment plans will be available for any debt owed the HOA, no additional add-on costs or interest charges added to the debt during payment plan except as related to issuing Payment Plan Account Statements, and if the

homeowner doesn't comply with the payment the HOA can proceed with collection action that can lead to liens and foreclosure. HOA Boards can make exceptions for hardship cases to extend the payment plan duration and payment amounts.

6. HOA will mail a copy of the homeowner's account statement once a month during payment plan duration that indicates all financial obligations to the HOA and status. This is a separate statement entitled Payment Plan Account Statement and the homeowner will be assessed \$10 for each monthly statement. The statement will include the amount agreed to be paid, last payment and date of payment, current balance, payment due date, verbiage indicating any amounts received from the homeowner will first be applied to assessments due and if remaining amount from homeowner payment doesn't meet amount owed under payment plan the homeowner will be considered not meeting their obligation under such plan and the HOA can refer the debt to outside sources for collection action that can result in lien, foreclosure and/or attorney fees and court costs as applicable. HOA will notify the homeowner by certified mail and either email or personal delivery of notice to the homeowner that their obligation under the payment plan has not been met and their intended actions for collection. Certified mail and a \$35 administrative fee can be charged to the homeowner. This delinquency notice will contain a heading Delinquent Payment Plan Notice.
7. In all instances in which the HOA has identified a covenant violation, no threatening language will be allowed in notification letters, no issuance of SLAP suit letters or any other threatening language in any communication is permitted.
8. No legal fees, collection charges or letter issuance charges can result from or related to payment plans.
9. Provide the HOA with the authority to utilize its' own funds to fix a violation if the homeowner doesn't resolve after the cure date in the fourth notification in four step process. If a violation involves a health and safety matter the HOA can use its own funds to correct the situation after notifying the homeowner both in person and certified letter about how and when the HOA will proceed and estimated cost to fix the violation and also to indicate that the homeowner can fix the violation themselves if they can meet the HOAs cure date. Only one notification will be issued to the homeowner in cases of violations of health and safety and the cure date is totally determined by the Board, The process to bill and collect for expended HOA funds used to correct the violation will begin with step 3 in the notification process.
10. HOAs will identify notification debt letters and violation notices to homeowners as either fines, legal costs, payment plans, assessments, special assessment and reimbursements and classify such debt in their financial statements.
11. Interest can't be charged in the covenant enforcement process except in the instance when the HOA utilizes its funds for corrective action (aka reimbursement debt).
12. Maximum amount of late charges for delinquent assessments or reimbursement debt each month is \$20 plus 8% simple interest on amount due in the four step collection process.
13. Prior to an HOAs ability to foreclose on delinquent assessments or reimbursement debt the outstanding amount (defined as total amount of these debts including all add on costs, late charges, administrative fees and other allowable charges) must

be equal to 4 months of regular assessments. A payment plan on such debt can preclude foreclosure.

14. The beginning date in calculating the cure date on a covenant violation is no later than 5 days after awareness of the violation by the Board or the date upon delivery and receipt of violation notification to the homeowner. During this 5-day awareness period the Board will begin an identification and verification of violation, approve or disapprove the violation, issue a notification letter as indicated in the four-step program. The receipt date of the notification to the homeowner can at the discretion of the HOA be either the date the notice was mailed plus one day, the day on which the notification was delivered to the home or unit owner.
15. No attorney fees or other charges above limits defined in four-step collection process can be collected from the homeowner either by the HOA or others involved in debt, fine or assessment collection actions.
16. A community-wide notice concerning violations can't serve as a first notification to an individual. Notification of violations are issued to unit owners for each violation.
17. No certified mailing will be required for the first and second notification in the four-step process. All certified mailing costs and other mailing and delivery costs incurred by the HOA during the four-step collection process will be paid for by the homeowner.
18. The homeowner is not charged any fees for the first or second notification including letter issuance, certified mailing costs, attorney fees or any other add-on charges.
19. Notifications will be issued in English unless the homeowner requests in Spanish. All other language request and related HOA costs will be charged to the homeowner. All HOA documentation posted on HOA web sites will be in English and Spanish including the HOA Declaration and by-laws, maintenance responsibilities, insurance issues and other official non-proprietary and personal information. Homebuyers will be provided HOA documents in either Spanish or English.
20. An HOA can't rely on fines, interest, late charges or income from foreclosure actions to fund operational expenses. An HOA must create a dependable income stream from homeowner assessments to fund HOA maintenance, covenant enforcement, reserve funds and other recurring expenses.
21. HOA Boards can make exceptions to cure dates and payment plans based on health, safety or other hardship cases.
22. Notifications for covenant enforcement will be delivered by U.S. mail (certified mail for third and fourth notice) or direct delivery to the homeowner's residence and by email. Notifications will include description of violation, amount of fine if not corrected, cure date and what covenant exactly concerns the violation, note the collection policy is available on the HOA website or upon request from the homeowner and that all mailing, delivery and administrative charges will be billed to the homeowner as indicated in the HOA collection policy. Each violation is independent of any other violations.
23. All account statements (also known as a Status Letter) issued by the HOA (or through its' management company or other vendor) to a requesting party will include all financial obligations of the employee to the HOA including outstanding fines, delinquent assessments, outstanding reimbursements, amounts due from special assessments, any Metro District debt collected by the HOA, or other recurring debt

including payment plans each identified with a description. Also, account statements will indicate all outstanding covenant violations and confirmed and upcoming homeowner debt obligations related to HOA law suits, insurance related events, known increases in assessments, upcoming special assessment or other known upcoming financial obligations.

24. Court awarded amounts for reimbursement of HOA legal fees will be remitted to the HOA. Any court awarded reimbursements for HOA legal costs less than the amount expended by the HOA as a result of limits that can be awarded will be an expense to the HOA and not charged to the homeowner.
25. Notifications of violations, delinquent assessment or reimbursement debt due the HOA will contain heading: Violation Notice Delinquent Assessment Notice Reimbursement Notice Payment Plan Notice
26. The total amount of any fine including allowable administrative or other charges can't exceed \$500 during the four-step collection process. Parking violations and related towing costs can exceed this limit as stated in item 44. The exception is a parking fine that can't exceed \$500 and any HOA payments to the towing company will be considered a separate debt as a reimbursement to the HOA.
27. Policy on repeat of original violation explained in four-step
28. A turnover cost of \$50 can optionally be charged the homeowner after the cure date is missed on the fourth notice and upon turning over any collection action to outside sources
29. Penalties against the HOA and its Board members for non-compliance with collection mandates in CCIOA will not result in personal or financial responsibility or liability to any HOA Board member except that a Board member(s) can be directed to resign by the Court, a majority of Board member (not including the party(s) to be removed. HOAs will purchase director and officer insurance to defend any Board member in a law suit.
30. Decision on who, HOA or homeowner, pays for any costs involved in a homeowner requested for a hearing on a violation to be decided by the HOA Board and can't exceed \$50 if HOA policy chooses to charge the homeowner.
31. A homeowner can request a hearing related to any fine or financial obligation to the HOA
32. Consequences to the HOA with their denial to the homeowner for a hearing on a violation or debt owned to the HOA will result in the violation or debt to be cancelled. If the request for a hearing from the homeowner is not settled due to difference concerning the date, time, place or chosen negotiator then the conflict still has the option to be litigated in court.
33. Only Boards can approve investigations and confirmation of violations and when to begin the four-step process.
34. No cost to homeowner at any time and under all circumstances to request an account statement either on-line, personal pick-up or if mailing is requested a \$10 fee plus U.S. mail. The HOA will only maintain one current, official and no other data base on homeowner records. Every homeowner statement issued to the homeowner, Board, homebuyers or others will contain a printed statement that it is the most current and official information available on the homeowner's account and the date prepared printed on the statement.

35. If third notification is missed the HOA can, in addition to original fine, charge the homeowner double the fine, if fourth missed the HOA in addition to previous charges double the fine prior to turning over to outside source. Include in four-step
36. Vehicle parking violations that result in towing the vehicle will result in an immediate fine plus any towing charges and issuance of a notification to the violator that indicates if the fine is not protested at a Board hearing within 20 days and subsequently dismissed it must be paid within 30 days of the violation or it can be turned over for collection action as the Board deems necessary. Repeat parking violations resulting in towing can result in the fine being doubled plus towing charges, a third violation within six months can result in a fine of \$200 plus any towing. Subsequent parking violations with the same homeowner requiring towing can each carry a \$200 fine plus towing charges. The amount of the fine to be determined by the HOA Board.
37. Violation and collection actions that began prior to passage of this proposal not subject to this law.
38. Board members required to read HOA governing documents and rules including covenant enforcement, fine policies and debt collection and confirm through HOA registration. This requirement places no additional legal consequences on any Board. The HOA Office can impose penalties for non-compliance equal to those penalties for not registering.
39. The HOA will maintain all homeowner accounts receivable and financial obligation records and make them available upon request by the homeowner within 3 days of such request. Homeowner can request the account statement as indicated in the HOA policy at no cost except for mailing and delivery charges. Account statements will be available through the HOA's web site
40. All notifications will be logged by the HOA including date of issuance, where/to whom sent, amount of fine, 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. A 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.
41. All payments will first be applied to assessments for the current month. Amounts received by the HOA in excess of current month due will next be applied to other outstanding debt. If excess amount received is not enough to cover amounts due for any payment plan or other debt the payment plan or other due dates on debt will be considered unfulfilled.
42. Limits imposed on attorney fees, notification issuance, court awarded attorney fees, administrative and other charges will be reviewed every three years by the State HOA Office to adjust to market rates but any rate increase can be no more than ten percent.

43. No direct or independent charges or billings to a homeowner from an attorney, management company or outside source are permitted. All homeowner HOA debt is a debt to the HOA and not a obligation to any other entity. Homeowner outstanding and delinquent financial obligations to an HOA can only be pursued for settlement by the HOA. Liens and foreclosure actions can only be completed in the name of the HOA and not by any outside entity.
  44. HOAs with 100 or more units are required to establish a website and post association documents (CC&Rs, bylaws and rules, budgets, etc.) and homeowner accounts to the site.
  45. HOAs must give homeowners options to pay debt including personal check, money order, bank transfers or other processes.
  46. Violations and subsequent homeowner correction action impacted by weather and/or seasonal changes, such as landscaping, painting or concrete work must confer with the homeowner on an agreed to cure date in the first violation notification.
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#### **Description of Fine 4-step notification for enforcement of covenant violations and fines::**

**First violation notice:** to be issued to the homeowner after the HOA has confirmed a violation has been committed. Confirmation must be completed within 5 days after the Board has been notified/made aware of the accusation of violation. First violation notice serves as a warning letter. The notice will include date the violation was confirmed and exact violation of covenant, the fine amount if not cured, a cure date will be no earlier than five days after the Board has confirmed the violation or the HOA has issued the violation letter plus one day whichever is the later, and that homeowner will be issued a second notice if the violation is not cured that can lead to a fine and other charges. First notification NO cost of any type to homeowner for first notice. The notice will include a statement indicating the homeowner can request a hearing to protest the violation and how to obtain the HOAs violation, fining and collection policy. The HOA will send a cure letter to the homeowner if the violation is settled prior to second violation letter. This letter to be sent to the homeowner by way of U.S. mail or personal delivery to the unit owner and email. Certified mail not required and not cost to homeowner related to this notice.

**Second violation notice:** will be issued no later than 5 days after the cure date in the first notice. Apprises the homeowner that they failed to cure the violation with conditions explained in the first notice. This is a warning letter prior to the actual assignment of the fine in the third notification. The homeowner will be granted an additional seven days after mailing the second notice to cure the violation. Homeowner will be notified that if cure date in second notice is missed the next notice (third notice) can result in administrative charges of not more than **\$35 plus mailing and delivery costs 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 and within 7 days of the cure date in the notice. 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. A hearing request by the homeowner must be initiated prior to the cure date on the second notice.

**Third violation notice:** appries the homeowner of failure to cure the violation by the cure date in the second notification and will include a notice of amount due: fine amount plus administrative charges and add-on charges of no more than \$35 plus mailing costs. The third notification is sent out to the homeowner no more than 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 plus overhead charges have been officially charged to the employee's account. No attorney fees, collection agency costs, or other add-on charges can be assessed the homeowner other than the administrative charges of \$35 plus mailing and delivery.

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

**Fourth notification Cure date not met by homeowner:** 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: 1) refer the debt to a legal entity or collection agency or court action 2) offer the homeowner a final chance to set up a payment plan 3) 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. 4) the HOA can additionally charge the homeowner \$35 plus mailing and delivery charges and add to the debt an amount equal to double the original violation.

### **Delinquent Assessments, special assessments, reimbursements and other monetary amount) owed to the**

HOA homeowner delinquent assessments will involve a notification and collection process: 1) all assessment delinquency notices and notices related to reimbursement to the HOA or other monetary amounts due the HOA will indicate a description of the delinquent debt, the total outstanding amount of debt, the regular assessment and any amount in the payment plan and as applicable the outstanding amount of a monetary debt owed, excluding amounts for fees and delinquent assessment, the HOA state due date for recurring assessment; indicate the homeowner can appeal for a recurring different due date based on financial hardship or health reasons; that amounts received by HOA are first applied to delinquent and current amounts due then late charges and interest and any fees defined in the HOA collection policy such as an allowable administrative fee to issue a delinquent statement of no more than \$10; all delinquent assessments are identified by month; payments from homeowner identified by date received; HOA issues a notice of delinquency no later than 10 days after due date; when next scheduled payment is due and what charges will be assessed upon

delinquency; indicate that delinquent assessments plus allowable interest charges, add-on, attorney fees and administrative fees equal to at least six months of recurring assessment can lead to liens and foreclosure; offer the homeowner a monthly payment plan to pay delinquent assessments to avoid liens and foreclosure noting that any missed obligations on such a plan can lead to foreclosure; indicate options to the homeowner to preclude foreclosure such as refinancing, reverse mortgage and companies and Government agencies that may be of help.

Allowable charges related to assessment notification and collection procedures: the first notice of delinquency that is issued no add-on costs of any type; second notice on a continuing delinquency and thereafter interest charges on total of delinquent assessment plus \$10 fee to issue notice plus any certified mail costs plus a late charge applied on no less than a monthly basis; upon issuance of third notice and any additional notices of continued delinquency all allowable charges in the second notice can be assigned; when the homeowner's delinquent assessment debt reaches an amount equal to six months of recurring assessments the HOA can turn over the collection process to a collection entity of their choice such as an attorney, collection agency or a court action and charge the homeowner a one-time turn over charge of \$50. Attorney and legal fees can begin with turning over the debt to a collection entity. Attorney and collection fees incurred and payable by the homeowner after debt turnover to outside source for collection or in a court action and throughout any lien and foreclosure process are limited to \$750.

Expenses incurred by an HOA to correct a homeowner's violation or to recover monetary amounts due to homeowner actions cause the HOA to issue one (first) 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 \$50 for such referral action. The total amount of violation debt will be capped at the amount expended by the HOA to correct the violation plus debt turnover cost up to \$50 plus \$35 administrative cost-plus interest charges (does not pertain to fines) on amount due no greater than 8% per annum simple interest and any mailing and delivery costs. 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.

Foreclosure and assignment of interest charges are permitted in the delinquent assessment process and with all owed monetary amounts to the HOA in which the HOA has expended funds.

#### **HOA financial record keeping requirements for homeowner accounts:**

Homeowner accounts maintained by the HOA will indicate all financial obligations of the homeowner with the HOA including: date statement prepared; a statement indicating that all billings and receipts are current with the statement prepared date and indicate that statements are prepared on a monthly basis and any payments received on

accounts are posted and reflected in the statement within three days of receipt; the regular assessment amount and payment due date; any delinquent assessment amounts and related fees; any payment plan obligations listed separately by type (assessments, fines or monetary amounts owed the HOA) and amount due each month; any HOA liens on the property; indicate if any foreclosure action is active; any and all other monetary amounts owed the HOA by type; a warning message if a payment required under a payment plan has been missed; any outstanding fines by type and amounts due; any active and ongoing special assessment obligations by type and amounts due and when; any known and/or pending insurance obligations or community debt settled but not posted to the account for which the homeowner may be liable; note any pending or in process legal or court actions; note the amount in the HOA reserve fund;.....(all/most of these requirements are or should exist in record keeping processes of an HOA and not require any one time material costs).

All homeowner accounts will be updated no less than monthly and updates to outstanding debt owed HOA to be updated immediately upon payment or cure of violation and at same time any notice is issued that impacts outstanding balances.

The format and display of homeowner financial accounts can be determined by the HOA but the content as described herein is not negotiable.

Homeowner accounts and statements will be available to the homeowner upon request and at no cost other than mailing and delivery charges.

HOAs will comply with the notification, billing and collection policies in this statute but may elect to absorb certified mailing and delivery costs, costs to issue delinquent notice, costs to transfer delinquent assessments and fines to an outside source with such policy noted in their governing documents.

Non-payment of fines can result in penalties and legal action but HOA foreclosure action cannot be solely based on unpaid fines and related costs. Delinquent assessments and reimbursement debt can result in a foreclosure when the debt including any add-on charges equals or exceeds six months (or other lesser duration. be worked out when writing legislation) of HOA recurring assessments.

All homeowner payments will first be applied to assessments for the current month with any remaining amounts next applied to delinquent assessments not covered under any payment plan and then to payment plan debt and the remainder to other outstanding debt of the homeowner.

Partial payments due under payment plans that are less than the scheduled payment will be considered a breach of the terms of the payment plan and such debt can be forwarded to the HOAs collection entity.

Payment plans will be offered to homeowners for any unpaid debt to the HOA. No payment plan can be rejected if such plan has a duration of one year or less.

When a Board has validated that a violation or other infraction exists and threatens the health or safety of the community, the Board will notify the homeowner immediately in person and with a first notification for corrective action that is no more than 5 days or as negotiated with the homeowner and failure to cure can result in the HOA fixing the violation with their own funds and subsequently being reimbursed by the homeowner. Failure to reimburse the HOA according to the four-step process can lead to foreclose.

Homeowners are entitled to a hearing with the HOA Board and a mediator upon request to challenge the validity of fines, liens, assessment and reimbursement debt. Homeowners can challenge any HOA debt or lien in the event hearing requirements and/or disagreements can't be resolved in order to conduct the hearing. Requirements to request a hearing are defined in your governing documents.

Small Claims court can be used for HOA homeowner dispute of any type. The court can invoke injunctive relief as applicable and other remedies under its authority. If the homeowner loses their case they can be subject to paying HOA legal costs up to \$500. All HOA legal costs above \$500 will not be the responsibility of the homeowner nor can the homeowner be pursued for such legal costs by any legal entity or through any other collection action The courts decision is final and all financial obligations of the homeowner resolved in the court decision and the award of legal fees in the court case.