

HOA Foreclosures: Homeowner Equity Protection and Rentals Administered by the Dept of Regulatory Agencies (DORA)

Developed by the Colorado HOA Forum

Email: www.coloradohoaforum@gmail.com Website: coloradohoaforum.com

Introduction

HOA home foreclosures based on delinquent assessments can result in a homeowner losing most or all of their home equity through foreclosure. The main cause of this is a result of the home being sold at an unreasonably low sales price at an HOA foreclosure auction. There is no guaranteed sales price at the auction to protect homeowner equity or to protect the homeowner from having their home auctioned off for a small fraction of its actual market value. The opening bid in an HOA foreclosure auction is equal to the HOA Super Lien plus outstanding property taxes. This proposal sets a minimum home sales price (MSP) that secures 60% of homeowner equity, pays off the Super Lien, taxes owed on the property and first mortgage. The MSP allows for investors purchase and resell at profits ranging from 15-25%+ on a resale (depending on homeowner equity and other factors)

This Bill also addresses rental units in the HOA and mitigating a problem that exists when the home owner collects rent but does not pay the periodic assessment to the HOA. This can lead to foreclosure on a rental and/or eviction of a tenant who is up to date with their rental payment but the owner fails to pay the assessment. HOA homeowner rental approval and rules must be updated as indicated in this proposal to ensure landlords not only collect rental amounts but pay the HOA for assessments that are part of the rental amount.

Requirements:

- HOA foreclosures can only be pursued by the HOA to recover HOA delinquent assessments and a maximum of \$2,500 in legal expenses.
- Assessments must be four months in arrears prior to initiating foreclosure legal action by the HOA. Special assessments are not considered “assessments”. Assessments are the monthly or other time period regular payments to the HOA from the homeowner for use in maintaining the community and paying overhead expenses.
- The HOA super lien that is filed by the HOA during the foreclosure process can't be greater than four months of assessments plus \$2,500 in legal fees. Proceeds from a foreclosure sale will first pay off taxes followed by the super lien.
- Any amount owed by the homeowner to the HOA in excess of the super lien will be paid with auction or private home sale proceeds after taxes, super lien, 60% of homeowner equity and the 1st mortgage are paid.
- HOAs will include specific requirements in their governing documents concerning foreclosures and rentals to include but not limited to:
 1. If rentals allowed

2. Does the HOA have a maximum number of rental units permitted in the HOA are short term rentals permitted and if so, define what is considered a short-term rental and associated duration periods
 3. Process to gain homeowner approval to rent a property
 4. Any maximum number of rentals in a community that are owned by one or more persons, owned by out-of-state investors, owned by a person or business who will not be the occupant of the property.
 5. Responsibilities of home owner and tenant and the HOAs authority to fine for violations or to evict a tenant. Fines and fees are the homeowner's responsibility.
 6. Indicate that HOA assessments, monthly or otherwise, on rental properties must be paid directly to the HOA and only through automatic payment from a financial account
 7. The HOA will not invoice the tenant for any fees or fines.
 8. Authority of the HOA to evict a problem tenant
 9. Pet policies for tenants and related fines
 10. The billing and collection policies of the HOA and in CCIOA are applicable to rental properties
 11. The home owner will provide the billing address for any notifications or correspondence concerning the rental unit (this can't be that of the tenant). All other HOA requirements imposed upon rental properties remain valid
 12. The HOA can begin legal action or eviction to collect delinquent assessments when the rental unit owner is in arrears three months regardless of what the HOAs operating policies indicate for non-rental units
 13. HOA amenities will not be available to a landlord or tenant when the property is delinquent by three months with proper notification to the owner and tenant.
- An HOA home foreclosure will require the HOA or other party to set a minimum sales price on the home for use in establishing an opening bid on the home at the foreclosure home sale auction and for use by the homeowner if they are selling the home on the open market.
 - The opening bid at the auction requires a minimum sales price computed as: market value as determined by a professional appraiser, less 60% of homeowner equity (equity is the market value of the home less amount of outstanding first mortgage), amount of super lien and taxes owed on the property, amount of outstanding first mortgage. Proceeds from the sale of the home to be distributed in this hierarchy: Super Lien, 60% of homeowner equity to the homeowner, first mortgage, remaining homeowner debt after payment of Super Lien.
 - An option, at the discretion of the HOA, in collecting delinquent homeowner assessments is for the HOA or court to direct a homeowner to sell their home on the open market at the minimum sales price. Sales proceeds used to extinguish liens/debt mentioned above and the order provided above. If the

home is not sold within 120 days after being up for sale on the open market the in HOA could require it be placed and sold at an HOA home auction with the opening bid of the minimum sales price.

- Prior to the HOA pursuing home foreclosure, the homeowner would be required to attend (or decline signature) a credit counseling session that explains their options to avoid an HOA foreclosure, selling their home themselves on the open market, how to keep possession of and continue living in their home and other topics on homeowner options. The cost of this session will be paid for by the homeowner.
- A hearing between the homeowner and HOA Board will be conducted prior to the HOA pursuing foreclosure action. The meeting is intended to resolve the delinquent debt prior to any Board foreclosure action. The hearing must be completed after the homeowner attends a mandatory credit counseling session. There is no cost to the homeowner for the hearing. No legal representation is allowed to attend the hearing unless both homeowner and HOA agree to their presence and paying such legal costs.
- The proposal would have a fiscal note of zero.
- Notification and letter issuance charges sent to a homeowner from an HOA property management company or legal firm concerning any HOA debt, fine or concerning foreclosure action will be capped at \$25 plus mailing and delivery charges.
- Mediation is optional upon agreement between the HOA and homeowner but only after credit counseling and the HOA hearing are complete and no settlement is reached. If no agreement is reached in either the hearing or optional mediation the HOA can pursue legal action.
- Removing the requirement for an HOA rental payment plan between the HOA and landlord to extinguish assessment debt, be paid in amounts of at least \$25 until the balance owed is less than \$25. Change to: The amount of an installment payment plan for a rental property to payoff delinquent assessments to be no longer than six months.
- Remove the requirement that an HOA physically post notice of a unit owner's delinquent account on the unit owner's unit or property
- HOAs and their attorney are prevented from sending any SLAPP/threatening letters to homeowners concerning impending foreclosure or collection action. Notification letters to homeowners concerning delinquency will be restricted to the HOAs billing and collection policy and CCIOA.
- No Status Letter or Home Sale Transfer Fee will be charged to the homeowner or anyone else involved in an HOA foreclosure unless such charge is considered to be extraordinary and unique and any such charges supported by an invoice to the home seller describing what the charges are for, line item costs, when the expense was incurred and that it has Board approval. This includes charges to the home seller or anyone else for documentation or home owner account statements of debt and payment of assessments.