

Issues and Priorities: HOA Foreclosure Equity Protection Reform

Developed by the Colorado HOA Forum

www.coloradohoaforum.com

Email: coloradohoaforum@gmail.com

Foreclosure Home Equity Protection Proposal

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The content and requirements in this document will not change unless found to be inappropriate, ineffective, incorrect or too costly to implement. This proposal is intended to build upon HB 22-1137 foreclosure issues. It includes provisions that mitigate the possibility of a homeowner losing most or all of their home equity in an HOA foreclosure, precludes a foreclosed home from being sold for a small fraction of its worth, caps attorney foreclosure attorney fees at \$2,500 and requires the homeowner to attend credit counseling to make them aware of options to foreclosure and/or how to remain in their home.

This proposal would: be included in the HOA's billing and collection policy, require this information to be posted on the HOA's web site and emailed to all homeowners once a year; be presented to homeowner's once a year at a community meeting; and require HOA compliance with this proposal to be confirmed as part of the HOA yearly registration. The State HOA Office will email HOA foreclosure policy to all registered HOAs once a year and develop a presentation for use by HOAs in disseminating this information to homeowners and to be posted on their website.

Credit Counseling: Offering credit counseling to the homeowner prior to initiating a foreclosure will be mandatory. Foreclosure and loss of all or most of homeowner equity can be avoided but too often the homeowner is unaware of options to stop/cure the foreclosure vs allowing the foreclosure to proceed. Homeowner credit counseling educates the homeowner on the foreclosure process and options to settling the HOA debt prior to a foreclosure be initiated.

Attorney Fees: Avoiding foreclosure and not making it a primary means of an HOA to collect its debt will greatly reduce and avoid the high cost of legal fees by the HOA and homeowners. Capping legal fees on the foreclosure action to \$2,500 will end the abusive practice that can add many thousands in legal Bills to the amount owed to the HOA by the homeowner. Any legal fees above \$2,500 incurred by the HOA in the foreclosure action are the responsibility of the HOA and can't be collected from the homeowner in a separate legal action or collected by the attorney who billed the HOA.

Home Sales Price: The sales price of the home is a critical factor in protecting homeowner equity. There is a balance between setting a minimum acceptable foreclosure sale price (opening bid) to ensure protection of home owner equity and setting a sales price that will make the home financially appealing to investors and others at the HOA auction. This equity protection proposal will not result in all foreclosed home sales protecting all or even part of the homeowner's equity. Properties with little homeowner equity, costly liens and/ or a large outstanding mortgage most likely can't have homeowner equity protected (see examples below). This proposal protects 60% of homeowner equity. The formula used to determine the opening bid: taxes owed on the property plus HOA Super Lien plus amount of outstanding first mortgage plus 60% of homeowner equity.

HOA debt collection policies affect foreclosures. Debt to the HOA by the homeowner mostly involves delinquent assessments, special assessments or charges to a homeowner to recover financial damages they incurred for which the HOA has paid for but not been reimbursed. Fine collection generally relates to violations of covenants. One major difference between the two is debt collection can result in foreclosure but fine collection can't part of the HOA foreclosure transaction.

Homeowner HOA debt collection procedures must comply with CCIOA notification procedures else the forfeiture action becomes invalid and the HOA would have to begin the process anew. Notification and credit counseling are an important part of the foreclosure process and this proposal. This must be made mandatory. Upon the first notification to the homeowner that the HOA is pursuing collection action that can lead to foreclosure, the HOA will offer credit counseling to the homeowner to: educate them on options to avoid foreclosure; inform them of how to regain ownership of their home post foreclosure; how to utilize the equity in their home to retain home ownership; use financing options and other means to protect their equity; and how to negotiate with the HOA to cure the debt. The cost of credit counseling is paid by the homeowner. The homeowner is allowed 10 days after being offered counseling to complete the session else the HOA can proceed with the foreclosure. DORA will develop a form for the HOA and homeowner to sign that indicates credit counseling has been completed. The form will be posted on the HOA Office website, sent to all registered HOAs and be posted on the HOA website. DORA will post a list of credit counseling businesses on their web site and cost for counseling.

This proposal will ensure that the HOA debt is cured upon the sale of an HOA foreclosure and that the "HOA super-lien" remains valid. The minimum sales prices guarantees that upon a foreclosure sale the proceeds can pay off the tax lien, super lien, first mortgage and remit 60% of homeowner equity to the HOA homeowner. The 60% equity is paid to the home seller and can't be used to pay off liens in the foreclosure process.

This proposal will not inhibit the HOAs ability to enforce covenants and fine violators. This proposal will not result in an increase in HOA assessments or in the ability of an HOA to bill and collect for monthly or other cycle of assessment collection. The only change will be to the amount limit placed on HOAs in incurring legal fees payable by the homeowner in a foreclosure action.

All foreclosure notifications and other correspondence to the homeowner after missing the fourth notification cure date will be by certified mail and paid for by the homeowner.

An HOA can charge the homeowner an administrative fee up to \$50 when the fourth notification notice cure date is missed and upon turning over the debt to an outside collection authority or attorney.

Attorney fees and related charges to a homeowner in a foreclosure are capped at \$2,500. This includes all attorney fees and other charges during the total foreclosure process. Fees above this amount will not be the responsibility of the homeowner or HOA.

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.

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.

A foreclosed upon homeowner will be allowed "redemption" rights after their home is sold at a foreclosure auction whereby they can buy back their home from the buyer within 30 days. The redemption amount is equal to what the buyer paid at the auction plus any expenses the buyer incurred

in the purchase of the home. All purchaser requests for reimbursement of expenses from the HOA home seller will be documented indicating a description of the expense, when incurred, amounts by line item and evidence the expense was paid by the home buyer

Changes to HB 22-1137:

Remove the requirement that an HOA physically post notice of a unit owner's delinquent account on the unit owner's unit

Reducing the minimum duration of a payment plan that an HOA may enter into with a unit owner for the payment of unpaid fees, fines, or surcharges from 18 months to 12 months

Removing the requirement that monthly installments of a payment plan be paid in amounts of at least \$25 until the balance owed is less than \$25 Change to reflect the previous change: The amount of an installment payment determined by dividing the total debt by 12 (months) or less depending on the payment plan agreed to among homeowner and HOA).

Allowing an HOA to charge a unit owner for the cost of sending notices or documentation by certified mail. The charge for letter issuance is capped at \$25 plus mailing costs that can't exceed the actual cost of certified or other mail charge.