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Colorado HB 22-1137

HB 22-1137 content modifications
HOA Foreclosures, Fines & Debt Collection Policy and Dispute Resolution

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

Definitions will be developed including: 1) administrative charges related to issuance of notification letters in four step process 2) cure time 3) 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 4) covenant violation and fines relate to homeowner violations of covenants, controls restrictions rules indicated in the HOA's governing documents and with rules developed and passed by a Board 5) mail and delivery charges include certified mail and U.S. mail postage charges but will not include any extra charge to delivery a notification or other correspondence to the homeowner's unit

Items in red can be written into the four-step notification, billing and collection process

1. Define a process for fine identification, notification, billing and collection and for delinquent assessments and reimbursements: we recommend a defined 4 step approach that can wrap in many the issues below, see below
2. Reduce the cost of attorney fees, legal and court costs throughout the covenant and other debt collection enforcement processes related to notifications issuance and in legal proceedings in and out of court
3. 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. Require two property appraisals payable by the homeowner. Require notification of first mortgage lenders via certified mail of upcoming foreclosure auction.
4. HOA income from payment of fines, add-on/administrative charges, attorney fees and court awarded amounts, delinquent assessments, reimbursements, interest charges and other income retained by HOA. Amounts owed to an HOA management company, legal entity or other party involved in these processes will charge the HOA for notification, administrative and other reimbursable costs incurred.
5. HOA will collect contact and other information from new residents and provide them with the covenant enforcement, delinquent assessment and reimbursement policy.

HOA will update records on contact information and distribute these policies once each year by way of email, posting on web site and presentation at annual meeting.

6. Reduce the cure time for violations as indicted in the four-step process
7. Reduce the duration of any payment plan to one year, only one payment plan per debt and payment plans can be offered for any debt owed the HOA, no additional add-on costs or interest charges added to the debt during payment plan, HOA mails a copy of the homeowner's account once a month during payment plan and can charge \$10 for each monthly statement with title on this letter indicating Payment Plan Status Letter and such letter indicating all outstanding financial obligations, status of assessment, and separate identification of payment plan and such notice will indicate 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 will refer the debt to outside sources for collection action and can result in lien or foreclosure. HOA will notify the homeowner by certified mail and/or email or personal delivery of notice that their obligation under the payment has not been met and their intended action
8. In all instances in which the HOA has identified a covenant violation, no threatening language in notification letters, issuance of SLAP suit letters or threatening language or other communication is permitted.
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 or immediately if the violation involves a health and safety matter. If a health and safety matter the HOA will issue a first notification indicating that the cure date is 5 days from date of notification letter to fix violation themselves, reach agreement on a plan for homeowner or if no agreement can be made with homeowner the notice will indicate the HOA's intended action: sent certified mail and hand-delivery to unit address. This type of event and resulting debt to the HOA will be referred to as a debt of reimbursement
10. Segment processes in policy by fines, assessments and reimbursements: they are different and clarifies to homeowner. Four-step mostly applies to both.
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 charge for delinquent assessments or reimbursement debt each month is \$25 plus 8% simple interest on amount due.
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 X months of regular assessments. A payment plan on such debt can preclude foreclosure. Discussion on whether this should be the current 6 months in the law or less.
14. Indicate the beginning date that fine policy is initiated is no more than 7 days after awareness of the violation by Board: in four step process. During this 7-day period

the Board will begin an identification and verification of violation approve or disapprove of implementing the four-step program

15. No attorney fees or other charges above limits defined in four-step HOA policy, the four-step process or incurred by the HOA or third outside resources in legal or collection action 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 can not serve as a first notification to an individual. Notification of violations are issued to unit owners
17. No certified mailing will be required for the first and second notification in the four-step process. All certified mailing costs incurred by the HOA are 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. Make clear in four-step.
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.
20. An HOA can't rely on fine, 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 and other recurring expenses.
21. HOA Boards can make exceptions to cure dates in fines 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) and direct delivery to the homeowner. All notices related to covenant enforcement and related amounts due will be posted to homeowner's account. All delinquent assessments or other reimbursement amounts will be posted to the homeowner's account.
23. All account statements 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 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 law suits, insurance related events, known increases in assessments, upcoming special assessment or other known upcoming financial obligations.
24. Court awarded amounts become a debt to the HOA not to legal representatives or others. This also becomes a reimbursement debt to the HOA and posted to the homeowner's account. The HOA will pursue collection action.
25. The maximum charge for mailing of an outstanding notice of debt is a \$10 administrative fee plus mailing charges but no such charge is applicable to issuance of notices in the covenant four-step process as the \$35 administrative fee covers such cost.

26. Notifications of violations, delinquent assessment or reimbursement debt due the HOA will contain heading: Violation Notice Delinquent Assessment Notice Reimbursement Notice Payment Plan Notice
27. There will be a maximum of \$35 charged each month for preparation and delivery of the third and fourth notice plus certified mailing costs
28. No threatening language in notification letters or the use of SLAP suit letters or threatening language is permitted.
29. The total amount of any fine including allowable administrative or other charges can't exceed \$500. Court awarded costs to the HOA are not part of this \$500 maximum.
30. Policy on repeat of original violation within 2 years explained in four-step
31. 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
32. Non-monetary penalties against the HOA for non-compliance, these processes do not increase the personal liability to HOA Board members
33. Who pays for hearing costs? Decision on who, HOA or homeowner, pays for any costs involved in a homeowner requested hearing on a violation.
34. A homeowner can request a hearing on any fine or financial obligation to the HOA
35. Small Claims: losing party may pay defendant (HOA) legal costs within limits stated herein, mention in HOA policy and in CIOA
36. All notices will contain standard text, see below, to apprise recipient of pertinent issues related to notice.
37. Consequences of the HOA not offering a hearing and/or if the HOA and homeowner can't agree upon the process what the homeowner's options are: go to court
38. Dates: 7 days to cure a violation from mailing date of notifications; Board has 5 days after a cure date is missed to issue next notice; Board has 10 days after initially being notified of a violation to identify, investigate and validate a violation and if valid to issue a first notice; the Board will approve all investigations of violations; it is the homeowner's responsibility to inform about their correction action to a violation.
39. Only Boards can approve investigations of violations and when to begin the four-step process
40. HOA will send homeowner a notice of cure upon correction of violation: a \$10 maximum charge to homeowner
41. Record keeping requirements and homeowner access to most current account statement: see below. 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 and text will be printed on a statement that it is the most current and official information on the homeowner's account.
42. A log of all notification letters, fine amounts assessed and fees will be maintained by the HOA.
43. 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

44. 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.
45. 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 of no more than \$25. Account statements will be available through the HOA's web site
46. 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.
47. A \$50 fee will be assessed the homeowner if the debt is turned over to an outside party such as an attorney, collection agency or property management company.
48. 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.
49. 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.
50. The charge to a homeowner for any notification, warning or other letter, email or correspondence related to fines, covenant violations, debt collection, liens, or foreclosure issued by the HOA, an HOA lawyer or the HOA's management company issued independently and not linked to the four-step process or other policy in this directive is limited to \$35.
51. No direct or independent charges 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.

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. Must be completed within 5 days after confirming a violation exists. This serves as a warning letter. The notice will include date the violation was confirmed,; a cure date will be seven days after notification issued, which covenant was violated, the amount of the fine if not cured, and that homeowner will be issued a second notice if the violation is not cured. First notification NO cost of any type to homeowner for first 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. WHO PAYS FOR HEARING REQUESTS

Third violation notice: apprises 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: apprises 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 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 delinquencies; 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.

Our only comment on using Small Claims court would be to limit court awarded costs and attorney fees. Small Claims is considered an interim solution and limited until an out of court process is assigned to the State HOA Office

All notifications will have a standard statement:

Your HOA has a delinquent assessment, fine notification, billing and collection and other debt policy in their governing documents. Contact your HOA for guidance on how to get a copy of policy. Your HOA has 3 business days after they receive your request to comply.

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 payments will first be applied to assessments for the current month. Amounts received by the HOA next be applied to other outstanding debt. If excess amount received is not enough to cover delinquent debt or payment plan payments then the payment plan will be considered not fulfilled. In the case of other debt owed the HOA, if the excess amount is not enough to cover amounts due as scheduled the collection process will continue as schedule as it a payment date was not met on time.

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 be justification to foreclose.

Homeowners are entitled to a hearing with the HOA Board and a mediator upon request to challenge the validity of fines, assessment and reimbursement debt. Homeowners can also challenge any debt they owe the HOA in court. Requirements to request a hearing are defined in your governing documents.