

## HOA Foreclosure Avoidance and Equity Protection Proposal

Developed by the Colorado HOA Forum

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**Introduction:** 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 all their home equity in an HOA foreclosure sale and precludes a foreclosed home from being sold for a small fraction of its worth. The computed minimum sales price (CMSP) in the HOA foreclosure under this proposal will allow the homeowner to compare the CMSP to solutions offered during the mandated credit counseling to allow for making an informed decision on how to proceed during the foreclosure process. This proposal will be funded by HOA registration fees and will not require taxpayer general funding. Implementation costs are mostly associated with forms development which are one-time startup expense with minimum future/recurring expenses.

Homeowner equity protection has the primary purposes: 1) mitigate the loss of homeowner equity in an HOA foreclosure by setting a minimum sales price 2) provides the homeowner with options/information to avoid foreclosure and remain in their home and 3) upon completion of an HOA foreclosure ensures the HOA lien is cured along with other outstanding liens (depending on the amount of debt and proceeds).

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 requires HOA's to confirm as part of the HOA yearly registration they are in compliance with the mandates in this proposal and HB 22-1137. The State HOA Office will email HOA foreclosure policy to all registered HOAs once a year and develop a presentation template for use by HOAs in disseminating this information to homeowners.

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. This proposal requires homeowners to go through credit counseling on the options to avoid foreclosure and stay in their home.

The computed sales price of a foreclosed home, the amount of homeowner equity and the amount of liens on the home are critical factors in developing a policy that protects equity and allows for the sale of the home. This equity protection proposal will not result in all foreclosed home sales to result in 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). Two methods to set the minimum sales price, "60% of market value less inherited debt rule" or 60% of equity protected" are presented in this proposal. Either method prevents a home to be sold for an extremely low price, provides equity protection for most foreclosures and provides a sales price that can attract investors.

HOA debt collection policies affect foreclosures. They must be simple and understandable and fair. Debt to the HOA incurred by the homeowner that can result in foreclosure mostly involves delinquent assessments, special assessments or charges to a homeowner allowing for the HOA to recover financial damages. Foreclosure based solely on fine debt is illegal: HB 22-1137,

Homeowner HOA debt collection procedures must comply with CCIOA notification procedures passed with HB 22-1137 else the forfeiture action becomes invalid and the HOA would have to begin the process anew.

This proposal involves mandatory credit counseling for the homeowner prior to any foreclosure action can legally be filed. Upon the first notification to the homeowner that the HOA is pursuing filing legal documents to foreclose, 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; financing options and other means to protect their equity; and how to negotiate with the HOA to cure the debt. Credit counseling will result in reducing the number of foreclosures when the homeowner understands options to foreclosure. The cost of credit counseling is paid by the homeowner. 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 its web site and provide a minimum script of information to be covered during credit counseling. DORA will prepare an agenda of mandatory issues to be covered during credit counseling. The credit counselor and homeowner will certify/sign the agenda indicating they have been provided with the mandatory information. The HOA will post on its website a document prepared by DORA indicating the availability of counseling, the cost, indicate it is mandatory with all foreclosures and the issues to be covered during the counseling session. A copy will be sent to all HOAs for posting on their web sites and emailing to homeowners. At least once a year the HOA will present to homeowners at a meeting and in an email the processes involved in foreclosure.

Calculating the minimum sales price based on 60% of home's market value, Method 1: No HOA foreclosure sale can result in the CMSP price (winning bid) less than 60% of market value less financial obligations inherited by the home buyer. If the calculation results in a zero or less minimum sales price then the opening bid and/or sales price will be the amount owed to the HOA. If the calculation results in a positive amount such amount is valid. The goal of the CMSP is protect some amount of homeowner equity and payoff all lien holders.

This proposal will ensure that the HOA debt is cured upon the sale of an HOA foreclosure that the "HOA super-lien" remains valid.

This proposal will not inhibit the HOAs ability to enforce covenants and will not interfere with the HOAs ability to collect allowable debt through foreclosure.

This proposal will not require any fiscal note (taxpayer funds) to implement nor add costs to the to either the HOA or homeowner. This is a cost savings initiative that helps most avoid foreclosure, administrative and legal fees and court costs. This proposal will allow most homeowners to retain title to their home, continue to live in their residence and halt the predatory practices that have resulted in loss of homeowner equity during foreclosure.

Discuss HB 22-1137 notification requirements and what costs can be assigned to the homeowner in the collection process and caps on such amounts.

Attorney fees and related charges to a homeowner in a foreclosure are capped at \$2,000. This includes all attorney fees and other legal charges during the total foreclosure process. Fees above this amount will not be the responsibility of the homeowner or HOA. DORA will post on its website a list of firms that process foreclosures for \$2,000 or less and each firm on the list will sign a DORA form including they will comply with the limit and any costs above such limit must be extraordinary and unique to the foreclosure and can be accepted or denied by DORA.

Notification and letter issuance charges sent to a homeowner from an HOA property management company or legal firm concerning any HOA debt or fine will be capped at \$35 plus mailing and delivery charges???

If the HOA's billing, collection and foreclosure policies and foreclosure processes are not posted on the HOA's website at least 60 days prior to a foreclosure action the foreclosure is invalid.

Homestead exemption: Most home loans have a provision whereby the homeowner agrees to forfeit their right to this exemption. Homeowners with no outstanding loan can use the exemption to protect equity. This will be explained during credit counseling.

If the foreclosed home does not sell for six months for at least the CMSP then the HOA and homeowner can renegotiate a lower sales price and the amount will decrease the proceeds to the homeowner and hence decrease the amount of equity protected??

In determining a market value of the home to be foreclosed up, the HOA and homeowner will order property appraisals payable by each party. The HOA and homeowner will meet to agree upon a market valuation. If no agreement is reached the appraisal with the highest amount will be selected.

## Examples of computing the Computed Minimum Sales Price (CMSP)

Both examples assume the buyer inherits any outstanding loan debt plus a debt to the HOA of \$8,000. Other possible liens on the property will not be considered but the process is the same. Home buyer only inherits what is agreed to

### Foreclosure Computed Minimum Sales Price (CMSP)

- 1) Precludes a Home from being sold for less than 60% of Market Value less all liens on property (Method 1) or a sale t(Method 2) that results in the homeowner not receiving at least 60% of their equity.
- 2) Prevents home sales at HOA foreclosure auctions from being sold at a fraction of a dollar that can result in a homeowner losing all their equity.
- 3) Minimum sales price is set to promote bids from investors/home buyers
- 4) The charts, Method 1 and 2 below, illustrate foreclosures on a home with a market value of \$400,000, an \$8,000 lien by the HOA and other outstanding liens. In the examples, the amount of liens represents the total liens on the property and includes the HOA lien. To simplify the methodology, taxes, legal costs and other prioritized liens are not entered into computing the home sales price. This methodology does not materially impact the home sale price.
- 5) An important use of the table below is that the homeowner in these examples can compute their equity, see the minimum sales price and resulting amount of their equity retained. The homeowner can compare solutions offered in credit counseling to the minimum sales price of the home under this proposal.
- 6) If the CMSP is zero or less the minimum bid and sales price defaults to the HOA lien to ensure the HOA recovers its debt (super lien).
- 7) If the CMSP results in the inability to sell the home after six months, the HOA and homeowner can negotiate the sales price downward. This will be addressed in credit counseling
- 8) The market value of the home is determined by comparing appraisals ordered by the HOA and homeowner followed by a negotiating session to agree upon the market value and in the event agreement can't be reached the higher appraisal will be accepted to determine market value. The HOA and homeowner will pay for the appraisals.

Scroll Down for Examples on Determining CMSP

**Method 1**  
**HOA Foreclosure Equity Protection Proposal**  
**Determining the Computed Minimum Sales Price (CMSP)**  
**Focus on 60% of Market Value and Amount of Liens**

**Minimum opening bid begins with 60% market value**  
**Computed Minimum Sales Price: 60% market value less liens inherited by buyer**  
**When liens are equal to or greater than 60% of market value this amount becomes the cost to the buyer**  
**The amount paid over the CMSP goes to the home seller**

(1) Market Value	(2) Lien(s) Inherited By Buyer <i>in blue, total liens on property underlined Yellow no liens Inherited</i>	(3) Homeowner Equity (1) less (2)	(4) Adjusted Mkt Value (1) X 60% Used in Determining CMSP	(5) *** CMSP (4) – (2) or Total of Liens which ever is more Amount Paid at Auction	(6) Distribution of Home Sale Proceeds: Lien holder(s)/ Homeowner Proceeds: Equity Saved	(7) Actual Home Purchase Price/Cost to Buyer (4) + (2)
400,000	<u>8,000</u> 0	392,000 392,000	240,000 240,000	232,000 240,000	0/232,000 8,000/232,000	240,000 240,000
400,000	<u>108,000</u> <u>50,000</u> <u>108,000</u> 0	292,000 292,000 292,000 292,000	240,000 240,000 240,000 240,000	132,000 190,000 212,000* 240,000	0/132,000 58,000/132,000 0/212,000* 108,000/132,000	240,000 240,000 320,000* 240,000
400,000	<u>208,000</u> 0	192,000 192,000	240,000 240,000	32,000 240,000	0/32,000 208,000/32,000	240,000 240,000
400,000	<u>308,000</u> <u>165,000</u> 0	92,000 92,000 92,000	240,000 240,000 240,000	8,000 ** 143,000 308,000	8,000/0 143,000/0 308,000/0	308,000 308,000 308,000
400,000	<u>240,000</u> 0	160,000 160,000	240,000 240,000	8,000 ** 240,000	8,000/0 240,000/0	240,000 240,000
400,000	<u>260,000</u> 0	140,000 140,000	240,000 240,000	8,000** 260,000	8,000/0 260,000/0	260,000 260,000

\*Home buyer paid 80,000 over MCSP (132,000 + 80,000= 212,000) and inherited 108,000, the Total cost to buyer 320,000. Homeowner receives 212,000 and lien holders paid directly by buyer

\*\*When the CMSP is zero or negative, the default minimum bid is equal to the HOA lien. This creates an opening bid amount for the auction. The opening bid is the CMSP in most instances.

In all examples, when a sale is completed the CMSP guarantees the HOA lien is paid and all other liens. The CMSP results in a sales price to attract investors/home buyers, margin of 7 and 30%

**Method Two**

**Guarantee Minimum Equity Protection: 60% of Equity Protected**

This sets minimum sales price at 60% of homeowner equity

(1) Market Appraisal	(2) Debt Inherited By Buyer, Total Liens On home Underlined	(3) Homeowner Equity (1) – (2)	(4) 60% of Equity Protected Opening Bid	(5) CMSP* (4) + (2) Plus HOA Lien Amt	(6) Distribution of CMSP: Lien holder/ Homeowner	(7) Buyer Total Cost
400,000	<u>108,000</u>	292,000	175,000	175,000	0/175,000	283,000
	0	292,000	175,000	283,000	108,000/175,000	283,000
	50,000	292,000	175,000	233,000*	58,000/175,000	283,000
400,000	<u>208,000</u>	192,000	104,000	104,000	8,000/104,000	312,000
	0	192,000	104,000	312,000	208,000/104,000	312,000
400,000	<u>308,000</u>	92,000	55,000	55,000	0/55,000	363,000
	0	92,000	55,000	363,000	308,000/55,000	363,000
400,000	<u>375,000</u>	25,000	15,000	15,000	0/15,000	390,000
	0	25,000	15,000	390,000	375,000/15,000	390,000
400,000	<u>400,000</u>	0	0	8,000**	8,000/0	400,000
	0	0	0	400,000	400,000/0	400,000
400,000	<u>425,000</u>	0	0	8,000**	8,000/0	425,000
	0	0	0	425,000	400,000/0	425,000

\*Represents 60% of equity plus the amount of liens not inherited

\*\*When the CMSP equals zero or negative or an amount less than the HOA lien the sales price of the home defaults to the amount of the HOA lien to ensure the HOA super lien is satisfied.

Note: In both Methods in most scenarios home buyer/investor can realize a profit of up to 25%. Even when the total of liens are 75% of market value a profit margin of 7-8% can be realized.