

## DRAFT

### Colorado HB 22-1137

Fines, HOA Foreclosures\*, Debt Collection Policy and Dispute Resolution\*  
Comments by the Colorado HOA Forum [www.coloradohoaforum.com](http://www.coloradohoaforum.com)

Suggested Revisions to HB 22-1137: details are important and provide a systematic solution avoiding unintended consequence, ambiguities and loopholes. The following comments are intended for inclusion in any Bill written to enhance HB 22-1137 and HOA debt collection policies. Items are subject to consolidation but content be retained.

**Note , comments are new items and/or further add to original Bill content. Thus clarifying Bill content to ensure it is understood what is included or excluded we felt was something to be corrected.**

#### **General Administration:**

Fines and fees can't be assigned interest charges. Interest charges can only be assessed to homeowner debt related to unpaid HOA assessments (also referred to as monthly dues or monthly maintenance fees) and homeowner debt to the HOA in which the HOA seeks reimbursement funds expended.

Foreclosure can't solely be based on fines and fine related charges. HOA foreclosures can be pursued for unpaid HOA assessments and delinquent debt owed to the HOA resulting from the HOA expending funds to correct a homeowner covenant violation; to fix structures or damage caused by the homeowner that present a health or safety issue; to execute the authority of a court action or other to collect other HOA debt that has become delinquent after the HOA has exhausted standard collection processes.

Attorney fees can't be assessed until expiration of the cure date on the fourth notification described herein. After delinquency of the fourth notification, HOAs can pursue collection utilizing attorneys, collection agencies or the court system.

Administrative fees can be assessed beginning with the third notification letter and added to the fourth notification letter. The exception would be that an HOA

could optionally charge the violator certified mailing/handling as needed and when the cost is incurred by the HOA.

The first and second notifications (described herein) to the homeowner of a violation of covenants, controls and restrictions will be served by regular U.S. postal service and either an email or telephone call. No certified mail is required on the first or second notice with exceptions noted in this directive. Third and fourth notifications will be sent by certified mail and either email or a telephone call and paid for by the homeowner

Administrative and add-on fees assessed in the third and fourth notification notices can be no more than \$25 per notification.

The total amount of any fine, defined as the principle plus any attorney or other add-on fees incurred in or out of court, except for exceptions in this directive, will not exceed \$500 per violation. HOA awarded court costs pursued only after the expiration of the fourth notice cure date are limited to \$750. The exception is any repeat similar violation within 6 months of the original violation being cured will have the fine limited to \$1500 in the total amount and the HOA can be awarded up to \$1500 in court costs. A second repeat violation of the same kind can result in a fine total of \$2500 and court award legal costs up to \$3000. Cure date on repeat similar violations on the homeowner's behalf will be 14 days after issuance of the first notice and 10 days after the second notice and all add-on and attorney costs for repeat similar violations can begin with the first notice and repeated in the second notice and add-on costs repeated each month up to stated limits. Repeat violations will not require a third and fourth notice but after the second notice not being cured the HOA will apprise the homeowner of future collection actions including court action and/or the HOA taking action to correct the violation utilizing its own funds and collecting such expenditures from the homeowner.

An HOA can take corrective action on any violation that is not cured by the homeowner after the fourth notification expiration period. The HOA will charge the homeowner for any expenses incurred for corrective action. Collection procedures with this type of event require the four step/notification process but

administrative and attorney fees can begin upon the initial notification. Limits on the total amount related to an action taken by the HOA to correct a violation are limited to the amount expended by the HOA plus add-on and administrative fees during the four notice process and attorney fees up to \$1500 per event and court award of legal costs capped at \$3,000.

Homeowners are not limited in gaining award of court costs when they win a court decision.

All fines must be brought to resolution by an HOA within one year of the first violation notice either through payment or action by the homeowner, court action or agreement between the homeowner and HOA or they will be considered cancelled.

Administrative and other overhead charges and interest can't be assigned to any HOA homeowner debt on other than a monthly basis.

A homeowner has 14 days after the first notice to request a Tribunal/hearing with the HOA Board to resolve the violation.

Homeowner court challenges to a fine or fee or assessment must be completed within 15 days after the second notification. If the homeowner can't arrange for such a court date within this time frame they will be granted an extension based on the earliest available court date plus 15 days. The imposition of any HOA add-on fees can continue on the third and fourth notices but during any extended deadline to file a court case by the homeowner no such fees and add-ons costs can be added to the total due.

HOAs can double a fine or fee after expiration of the cure period on the second notice but the limit on the total amount of the fine can not exceed limits set forth in this collection policy.

The HOA and homeowner can agree upon corrective action to cure a violation that extends beyond deadlines described herein but such extension to cure can't go beyond 45 days of the first notification.

All notifications will be logged by the HOA including date of issuance, where/to who sent, amounts of fine/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 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.

Outstanding homeowner debt to the HOA will be documented on the homeowners account statement indicating the initial principle of the debt and any add on fees and cure date.

HOAs are precluded from depending upon fines and fees collection to fund maintenance and administrative responsibilities.

Notifications will be printed in either English or Spanish as preferred to by the debtor. In the absence of an identified preferred language English will be used.

The buyer(s) of an HOA home foreclosure can't be related to anyone on the HOA Board, the HOA management company or any of its affiliated businesses or any legal persons involved with the HOA. A home sold through HOA foreclosure must not be sold for under 75% of its market value minus debt inherited and attached to the property

#### **Four step notification on fines:**

**A four-step fine notification process described herein will be required to be part of HOA delinquent and collection policy and fees assessment on unpaid fines:**

First violation notice: appraises the homeowner of the violation. The cure period by the homeowner is 10 days after the issuance of the notice. Delivery should

include at least one written notification by U.S. mail or email or hand delivered to the homeowner. The only optional, allowable charge to the violator is delivery costs with no requirement to use certified mail. Certified mail costs to be paid by the homeowner. The notification should include the amount of fine if violation isn't cured. No attorney fees, legal fees, document preparation, overhead charges or collection agency charges are permitted with the first notice.

Second violation notice: appraises the homeowner that they failed to cure the violation with conditions explained in the first notice. The homeowner will be granted an additional seven days to cure the violation. The homeowner will be apprised that in the event the violation is not cured by the due date in the second notification, that the next notice (third notice) can result in administrative charges of not more than **\$35 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 within 5 days of the cure date in the notice in the first letter. The assignment of a monetary amount due (administrative and other add-on charges plus the fine amount) takes place with the third notification.

Third violation notice: appraises the homeowner of failure to cure the violation by the cure date in the second notification and can carry administrative charges and add-on charges of no more than **\$35 plus the amount of fine**. The third notification is sent out to the homeowner 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 and administrative charges are have been assessed and are due. No attorney fees, collection agency costs, overhead or other add-on charges can be assessed the homeowner other than the administrative charges of \$35.

Fourth violation notice: appraises the homeowner of failure to cure the violation by the cure date in the third notification, can carry administrative charges up to \$35 administrative processing fee plus amount of original fine and optionally the fourth notice can double the fine. No attorney, collection agency, overhead or add-on costs can be assessed other than the administrative charge of up to \$35.

The fourth notification is sent out to the homeowner 5 days after the cure date in the third notification.

If the cure date on the fourth notification is not met by the homeowner they will be notified by the HOA of their intended collection action which can include legal referral or collection agency action, offer to set up a payment and/or taking action and incurring the expense to correct the violation and subsequently charge/bill the homeowner for such expenses.

Interest charges on debt will be retained by the HOA.

Homeowner payment plans used to settle HOA debt will not extend beyond one year and failure to comply with a payment can result in foreclosure or legal action by the HOA to collect such debt in court. HOAs can permit a second violation of a payment plan during the yearly or other period prior to pursuing foreclosure or court action.

\*Comprehensive foreclosure reform and dispute resolution should be addressed in separate Bills. Comingling these issues with other proposals will not allow for a full and effective list of requirements.