

FIRST DRAFT

HOA Fines, Fees, Metro Districts and Foreclosure Reform and the unique situation at Green Valley Ranch, Colorado that brought these issues to the media and legislature (and still exist)**

It is understood that the items may be consolidated but the content remains.

A White Paper presented by the Colorado HOA Forum
www.coloradohoaforum.com

Background: The impact of Metro Districts (MD) on HOA finances has not been an issue with our organization's members nor in the media before the Spring of 2022. The Green Valley Ranch (GVR) HOA Master Association in Colorado and its relationship with a Metro District is used as the basis of this investigation. The relationship between GVR and its' MD provides broad insight on how the issues of HOA finances, asset management, fines and foreclosures can lead to the detriment of homeowners. The source of our information is from homeowners, media reports and GVR official documentation and financial statements. We could not gain any interviews with GVR Board members.

The GVR story involved what appeared to be an inordinate number of **HOA foreclosures** over the past years in this HOA prompting legislators and the media to ask questions. We also had questions concerning: were the number of and reasons prompting foreclosures out of the ordinary; did GVR's relationship with the Metro District have an impact on foreclosures and finances; why did the total amount of fines and attorney fees each year seem inordinate; what were the funding sources for the HOA after they assigned their homeowner assessments and assets to the MD; are foreclosure, fines and collection laws abusive to the benefit of attorneys and to the detriment of homeowners; is there a need for HOA reform; the impact on homeowner's rights within an HOA when a MD enters the management of the community; and what impact will HB 22-1137 (foreclosure and fees reform) deliver to homeowners. GVR also prompted

our investigation into whether [HOA polices and foreclosures were raced based.](#)

Problems in reporting on this story are many and indicative of investigating HOA's and the HOA legal and property management industry:

- 1) Foreclosure records are not easily accessed in each county nor are the reasons for foreclosure easily deciphered as there appears to be few standards in reporting, quality control and there is no central data repository on State foreclosure
- 2) At best sporadic information was found on the cost of HOA foreclosures and related attorney fees.
- 3) Although State law and an HOA's governing documents define foreclosure procedures there is no ability for the homeowner to dispute irregularities other than a costly cost system no affordable by nearly every foreclosed homeowner.
- 4) Delinquent account processes vary among HOAs and thus conclusions on collection policies leading to foreclosures is difficult at best.
- 5) Verifying GVR collection notification processes that led to some abrupt foreclosures and evictions were difficult to verify as the paper trail was not clear as to the "when, where and how" such was complete.
- 6) Media reports focused on racial policies at GVR which appear to have been inordinate among Black homeowners but such information could not be verified.
- 7) Legislative reform focused on collection and homeowner notification policies without considering the impact, in the GVR case, of the MD. GVR is unique in the foreclosure, fines and collection policies which was the story and not the number of foreclosures.
- 5) Homeowners at GVR seemed to be confused as to the use of HOA fines and attorneys that led to foreclosure thus too often the reasons for foreclosure never went beyond HOA policy.

The [Colorado HOA Forum](#) is a non-profit organization advocating better HOA governance through legislation.

Legislation and HOA Issues: HB 22-1137 exemplifies HOA legislative Bills that start out with good intentions and end with little impact on reform and homeowner's rights. Bills get watered down or killed and/or can result in the unintended consequences of being costly to HOAs/homeowners

This Bill was originally intended and/or had verbiage related to: 1) limiting attorney fees that can balloon a small fine into thousands but this was removed from the Bill 2) ending the practice of an HOA foreclosure being sold significantly below market price that can lead to a homeowner losing most if not all the equity they built up in their home 3) providing an affordable out of court or any venue to dispute the actions of the HOA leading up to foreclosure 4) limiting awards of attorney fees to HOAs in court cases that inhibit homeowners from going to court 5) precluding an HOA from depending on fines and fees to fund operations 5) to encourage compliance with covenants and not as a source of income 6) requiring HOAs to pursue the most cost effective means of collection effort vs defaulting to the costly use of HOA attorneys 7) precluding the use of attorneys in Small Claims Court by either the homeowner or HOA on challenges by the homeowner to issues concerning foreclosure 8) allowing an HOA to foreclosure on delinquent assessments AND debt owed to the HOA resulting from financial damages caused as a result of a homeowner's actions (excluding fines based on covenants) 9) no fine can exceed \$500 of the principle amount plus notification costs and \$200 in attorney fees 10) repeated offenses of the same violation will allow for doubling the limit of the previous fine 11) the total legal costs for any HOA collection effort or court case be set by DORA 12) no home can be sold at an HOA auction for less than 80% of market value 13) homeowners must be apprised twice each year that unpaid assessments can result in foreclosure and the HOAs collection policy. These and other suggestions were made by our organization but rejected. The significant aspect of HB 22-1137 is that HOAs can longer foreclose based only on fines. Note, the number of foreclosures related to fines is unknown.

Racial impact on HOA practices and foreclosures

We also attempted to answer the question of whether GVR or any HOA foreclosure or fining practice was racially motivated. GVR has a large minority home ownership and from what we could determine many of the foreclosed upon home owners were Black. GVR to our knowledge has no

record of legal liability on prejudicial practices with foreclosures or basing fines on race. The involvement of an HOA management company with fines, fees and attorney costs is not in the GVR business model. Management companies are hired to work with HOA Boards in the maintenance of the community and its common property. Since GVR has no common property of material value except postal boxes there is no particular need for this type of service: they are self-managed with a skeleton crew. However, GVR does have an ongoing arrangement with attorneys in the collection of fines and for foreclosures that seems to provide an inordinate and costly service on a recurring basis unlike any HOA we know of. Finally, since neither the media or our efforts have resulted in any interviews with Board members or GVR attorney we proceeded with our finding and conclusions based on interviews and documentation that was available. There is additional work to be completed and this may have to be completed by a government entity that has authority to subpoena those involved in GVR governance. We also are unaware of any completed or ongoing law suits concerning GVR collection policies from which we could have gained more complete and conclusive evidence. We must stress that we imply nor did we find any criminal activity in any HOA.

Findings

Media coverage of the GVR foreclosure issue brought on citizen's questions and legislative response. However, as discussed later, foreclosure reform via HB 22-1137 plugged one significant hole in HOA foreclosures but major issues inflicting financial harm to homeowners were left intact. The Bill provided improved notification procedures for HOAs regarding fines and fees assessment and actions related to all events that can lead to foreclosure and eviction. The major reform in this Bill relates to precluding any HOA foreclosure based solely on unpaid fines. How many foreclosures are actually the result of fines is questionable but losing one's home over such fines is not and alternative means of collection of fines will now be pursued (and hopefully and eventually less costly for the homeowner and HOA). Also of note in this Bill was a cap of 8% per annum interest rate an HOA can assess on unpaid debt.

The GVR Master HOA Association is unique and exemplifies a relationship between an HOA and a Metro District. Specifically, what happens when an HOA gives the Metro District all of its community property and assets? The GVR HOA Master Association transferred all its common property and assets to a Metro District including the right to collect and retain monthly assessments. Thus the dependable income stream from monthly assessments to fund any administrative and community oversight turned to zero. GVR Master Association continued to be involved in covenant enforcement, architectural reviews and the maintenance of community mail boxes. This required staff and hence labor and maintenance costs. Where would GVR get the financial resources to fund their remaining community responsibilities? GVR, in our findings, didn't initiate any special assessments or receive any funding from the Metro District.

The other significant part of this story concerns the impact of HOA attorneys on foreclosures and debt collection and HOA cash management gone astray. Findings via P&L Statements and Balance Sheets seem to indicate that GVR has a business model unlike any HOA that we've worked with. The HOA created a very effective fund-raising operation in cooperation with legal types to ensure a reliable income stream: fines related to covenant violations and foreclosures. GVR became dependent on income from fines and fees in the absence of monthly HOA dues. This process also allowed GVR to avoid imposing special assessments or other recurring fees to fund operational matters. This process was so successful that the cash balances from fines and fees after expenses each year allowed for cash accounts to swell to over a million dollars: it continues to increase. With no maintenance and capital replacement responsibilities on common areas and HBO assets (except mail boxes) the HOA didn't formally create a reserve fund.

This collection business within the HOA is quite simple: fine, pursue collection action via high-cost attorney fees and as long as the collections exceed the cost of collections the HOA will benefit. The downside of this process is that debtor's small fines morph into debt that becomes so burdensome that the homeowner can't pay and can move the debtor into foreclosure. HB 22-1137 may preclude foreclosures based on fines alone but does nothing to end the excessive attorney fees on any debt. Thus, the HOA, that pays the attorney costs upfront, will now get their attorney fees

not through a foreclosure but through other collection efforts. Thus, a fine at GVR is levied, a certain number are paid on time, those in delinquency incur excessive attorney fees (initially paid by the HOA anticipating reimbursement when the debt is settled). Foreclosure income works somewhat the same way. Upon foreclosure the HOA gets reimbursed for the attorney fees and the debt, the homeowner is burdened with such fees paid through the sale of the home. The attorney fees incurred by GVR, approximately \$300-400,000 a year from debt collection and foreclosure activities were paid for by homeowners upon debt settlement in and out of court. The HOA recovers most attorney fees through collection efforts in and out of court plus collects most fines enabling it to have a net income averaging nearly \$100,000 per year. Note, the lawyers get paid all billable hours and the HOA benefits by collecting the fines and fees. Legislation is needed to cap attorney fees and limit the amount of collection costs associated with any given fine.

We also identified how the lack of oversight on HOA operations can lead to an HOA's mission statement morphing into something not at all common: a fees-fines business operation entity within the HOA that is very profitable and costly to homeowners.

Below is our findings and recommendations to HOA homeowners to surface any relationship between an HOA and MD and how to analyze the impact before you buy your home. Note, even though an HOA has not assigned its' community assets and/or assessment income to a MD when you purchased your home a vote of the homeowners can change that relationship.

A. If you buy into an HOA and are told there are no HOA assessments (aka monthly dues) payable to the HOA it might be because the HOA has no common property responsibilities and thus no community asset and related maintenance costs. Most HOAs, by definition, own community property and assets and the community retains such assets.

B. Concerning item A, the HOA thus has no planned/dependable income stream from assessments but will still have expenses: purchasing insurance, in some cases part-time or full-time staff, telephone and website costs, may still be involved in covenant violation monitoring along with issuing related notification letters and collection processes, funding

community events, and other administrative tasks. How will the HOA pay for any expenses it incurs?

C. If your HOA has turned over all community property assets to a MD you will be paying your assessments via a property tax that includes your contribution to maintain former community property and assets now owned by the MD. Thus, you do have assessments but pay them to the MD via your property taxes. The property tax collectors turn over to the MD a designated amount agreed to that would otherwise be paid to the HOA for maintenance of common property. Your HOA will not have responsibilities to manage the amounts paid to the MD nor be involved in maintenance activities.

D. Your HOA can assign ownership of HOA assets and common property to the MD as long as there is no provision in the Declaration precluding this action. In most, but not all cases, a vote for homeowner approval will take place. However, in some cases the HOA Board can sell off assets without a vote of the homeowners.

E. Your HOA will still have its' governing documents that include controls and restrictions and governance policies that will have to be enforced. The MD has a set of their rules and guidelines which they enforce. The HOA will retain its ability to fine for violations and pursue collection activities which can lead to foreclosure.

F. HOAs may also retain other responsibilities such as architectural reviews and approvals and fining for violations.

G. If the HOA has no responsibility to maintain and replace community assets they will not be required to fund a Reserve Fund. This will be transferred to the MD

H. The HOAs budget which ideally should indicate income equaling expenses. In this case, the income projections would be zero from assessments but indicating expenses. So what is an HOA to do? In this case study the HOA found another income stream: fines. An HOA by definition should be paying for its services to the community via assessments (dues). Fines and fees are meant to encourage and enforce compliance with governing documents but not to be used as This practice encourages strict, unbending compliance to covenants with a primary goal

of collecting fines for revenue vs encouraging enforcement. If the HOA's expenses require additional funding (since they receive no direct revenue from assessments) they should either work with the MD to increase the property taxes (and then transfer the funds to the HOA) or change the governing documents to allow for a separate assessment directly paid to the Master Association. In addition, with aggressive fines and fees collections an HOA most likely will have revenue more than expenses. What should be done with this net income stream is also in question with this practice.

I. Excess revenue in any year can be carried forward to finance next year's expense or returned to homeowners but accumulating cash in HOA accounts year after year is considered improper and may be contrary to tax laws. In this case study there is no need to accumulate large cash reserves as there is no reserve fund responsibilities.

J. An HOA with aggressive fines and collection policies (and this does not involve monthly HOA through the collection of fines: one builds on the other.

K. HOA Boards and their policies may involve writing off or reducing fines but collection and legal fees will still be sought after as the HOA has already paid this expense.

L. HOA Balance Sheets that portray outstanding accounts receivable can be very distorted if not aged and uncollectible accounts are not written off.

M. In this study, the legal costs incurred on collection/fines nearly equaled or exceeded the fines income recorded. Most of the legal fees appear to be recovered from the debtor and thus reimbursed to the HOA.

N. In this case, homeowners paid the MD their HOA assessment and some sub-associations made their own separate assessment to maintain the sub associations retained common property and assets.

O. In this case, a benefit of the MD collecting what otherwise would be payments from homeowners to the Master Association, is that the delinquent assessments will be less collecting them through property taxes.

P. Transferring the HOAs assets and community property to the MD will result in the homeowners (who pay for maintenance and replacement of such assets) having less governance and input over the use of such previous community property.

Q. HOA homeowners will still participate in the election of HOA Board members but the responsibilities of these Board members will be of diminished authority as the MD has taken over some common responsibilities compared to Boards in “regular” HOAs.

R. The HOAs ability to develop rules, guidelines and covenants and homeowners to change the governing documents is reduced as such rules may conflict with that of the MDs rules.

S. The HOA can't have the community common areas and assets returned from the MD unless agreed to by the MD.

T. The MD can still assess homeowners for debt it incurred to fund the infrastructure during development: this is independent of HOA assessments. MD funding/bond issuance to fund infrastructure can be beneficial but homeowners are mostly unaware of their responsibility to pay off such bonds in the future.

U. Generally with the case study, the homeowners will take on more maintenance responsibilities such as mowing lawns, painting their home, roof maintenance, etc. The result of this homeowner assigned maintenance responsibilities and cost may keep assessments low but tends to drive up the number of fines and fees imposed on homeowners for related violations.

V. The MD, upon taking over control and ownership of the HOAs common areas and assets, is acting in the capacity of a management company but without having the HOA to approve activities relating to the common property.

W. If the MD ill-maintains the inherited HOA assets, the HOA will have pursued action with the MD and homeowner complaints on such property would proceed to the Master Association for consideration and then pursued with the MD. This adds a layer of bureaucracy to the homeowner who in the past filed a complaint with the Master Association for decision but now such a complaint must be passed on to the MD.

X. HOA HB 22-1137 has ended HOA foreclosures based on fines. However, a fine of a small amount still can morph into several thousand dollars due to collection and attorney fees.

Y. HOA home owners should be apprised before and after buying into an HOA about their collection policies and that delinquent debt can lead to foreclosure

Z. Home buyers and Realtors certify they were provided and read the HOA governing documents.

AA. Preclude HOAs from depending on fines and fees to fund operations and reserve funds.

BB. If the HOA you are researching or live in has no reserve funds (as indicated on the Balance Sheet) ask why? Get a copy of the latest reserve fund study. Is the fund adequate and is it being funded on a regular basis.

CC. Our proposal for HOA Foreclosure Reform.

**Due the difficulty in accessing official documents and in interviewing people involved in the GVR issue this document will be subject to change to provide more insight, details and, as needed corrections. We found no reason to believe any criminal activity is being conducted at GVR.

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