

COLORADO HOA FORUM
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PROPOSAL TO IMPLEMENT HOA HOME FORECLOSURES

THIS IS A FIRST DRAFT

COLORADO HOA LAWS, CCIOA, DEFINE MUCH OF THE HOA FORECLOSURE PROCESS. THIS PROPOSAL IS NOT MEANT TO REPLACE ALL THOSE MANDATES BUT TO REFINE MANY OF THEM TO PRECLUDE ABUSIVE PRACTICES. MANY OF THE STATE HOA RULES ARE REPEATED ,RESTATED OR REFINED IN THIS PROPOSAL TO ADDRESS HOMEOWNER'S ISSUES, RIGHTS AND FLAWS IN CURRENT LAWS. OF PARTICULAR NOTE WE ATTEMPT TO ADDRESS RESPONSIBLE INVOLVEMENT OF THOSE INVOLVED IN THIS PROCESS INCLUDING HOA MANAGEMENT COMPANIES AND LAWYERS: THIS IS NOT ADDRESSED IN CURRENT LAW. WE ALSO INCLUDE ISSUES WITH EXCESSIVE FEES AND FORECLOSURE HOME AUCTIONS ALSO NOT IN CURRENT LAW. TO GET TO A FINAL VERSION WILL REQUIRE MATCHING THIS PROPOSAL WITH CURRENT LAW AND INTEGRATING CHANGES. THIS IS A FIRST DRAFT INTENDED TO REWRITE COLORADO HOA FORECLOSURE REQUIREMENTS.

THIS RECOMMENDATION IS INTENDED TO ALLOW THE FORECLOSURE PROCESS IN HOMEOWNERS ASSOCIATIONS (HOAs) TO BE COMPLETED WITH HOMEOWNER PROTECTIONS AND ENSURE THE HOA HAS THE ABILITY TO COLLECT ALL HOMEOWNER DEBT. IT PROVIDES ACCOUNTABILITY ON ALL THOSE INVOLVED IN THE FORECLOSURE PROCESS AND HOMEOWNERS AN ABILITY TO CONTEST EVENTS IN THE FORECLOSURE PROCESS IN AN AFFORDABLE AND IMPARTIAL VENUE. HIS SUGGESTED PROCESS WILL NOT INCREASE COSTS TO HOAs, MANAGEMENT COMPANIES, LEGAL FIRMS OR THE COURT SYSTEM. THIS PROCESS ADDRESSES THE ABUSE OF EXCESSIVE FINES, FEES, INTEREST CHARGES AND LEGAL FEES ASSESSED HOMEOWNERS IN THE FORECLOSURE PROCESS. ANY REFORM MUST CONSIDER ALL ASPECTS OF THE HOMEOWNER AND HOA RELATIONSHIP FROM INCURRENCE OF DEBT TO COLLECTION ACTION. THE FOLLOWING SUGGESTS THE FEATURES OF FORECLOSURE REFORM. ELIMINATING ANY ONE OR MORE ITEMS WILL OPEN HOLES IN THE PROCESS TO MITIGATE THE IMPACT OF THE TOTAL PROGRAM. CCIOA ADDRESSES FORECLOSURES, LIENS AND COLLECTION POLICIES AND SHOULD BE MODIFIED AS NEEDED TO IMPLEMENT THIS PROPOSED PROCESS.

1. **HOMEOWNERS INCURRING ANY DEBT OTHER THAN RECURRING OBLIGATIONS FOR HOA DUES/FEES SUCH AS SPECIAL ASSESSMENTS, COVENANT VIOLATION FINES/FEES MUST BE APPRISED OF SUCH DEBT WITHIN ONE WEEK OF THIS EVENT. THE HOMEOWNER WILL BE NOTIFIED OF THE AMOUNT OF DEBT, WHEN THE VIOLATION OR DEBT WAS INCURRED, AN EXPLANATION OF DEBT, AND A STATEMENT ON ALL CORRESPONDENCE EXPLAIN PENALTIES FOR NON OR DELINQUENT PAYMENTS INCLUDING ALL ADD-ON COSTS SUCH AS FEES, INTEREST CHARGES AND COSTS TO NOTIFY THE HOMEOWNER AND THAT NON-PAYMENT CAN RESULT IN A LIEN ON THE PROPERTY AND/OR LEAD TO FORECLOSURE. NOTIFICATION WILL BE BY CERTIFIED LETTER THAT ENSURES SIGNATURE OF THE RECIPIENT AND SUPPLEMENTED BY EMAIL, TEXT AND PHONE CALL. CERTIFIED MAIL WITH A SIGNED RECEIPT WILL BE CONSIDERED THE OFFICIAL NOTIFICATION WITH OTHER FORMS OF COMMUNICATION DOCUMENTED FOR PROOF OF NOTIFICATION EFFORT IN THE ABSENCE OF BEING ABLE TO CONTACT THE HOMEOWNER BY CERTIFIED MAIL.**
2. **ADDITIONAL NOTICES LEADING UP TO A LIEN WILL INCLUDE THE SAME INFORMATION AND USE THE SAME METHOD OF NOTIFICATION AND INDICATE THE TIME TABLE FOR IMPOSING A LIEN AND IF SUCH LIEN IS NOT RESOLVED THE HOA CAN FORECLOSE ON THE PROPERTY.**
3. **ALL NOTICES WILL INFORM THE HOMEOWNER THAT THEY CAN ENTER INTO A PAYMENT PLAN OR NEGOTIATE WITH THE HOA BOARD ON A FINANCIAL SETTLEMENT. THE HOMEOWNER SHOULD BE INFORMED OF THEIR OBLIGATIONS AND CONSEQUENCES IN THE EVENT THEIR RESPONSIBILITIES ARE NOT MET.**
4. **THE HOA CAN BEGIN FORECLOSURE ACTION AT THEIR DISCRETION AND UPON APPROVAL OF THE HOA BOARD AND IN ACCORDANCE WITH THEIR HOA GOVERNING DOCUMENTS THAT MUST HAVE A BILLING AND COLLECTION POLICY OR FORECLOSURE ACTION CAN'T BE INITIATED.**
5. **FORECLOSURE ACTION WILL REQUIRE A DEBT TO BE EQUAL TO OR MORE THAN THE EQUIVALENT OF SIX MONTHS OF DELINQUENT HOA DUES AND CAN INCLUDE FINES, FEES AND INTEREST CHARGES TO REACH THE AMOUNT THRESHOLD.**

6. ANY NOTICE OF LIEN OR FORECLOSURE MUST INCLUDE APPRISING THE HOMEOWNER OF THE ACTION USING THE PREVIOUSLY DEFINED PROCESSES AND ALSO INCLUDE A DESCRIPTION OF CHARGES AS PREVIOUSLY MENTIONED AND PROVIDE THE OPPORTUNITY FOR THE HOMEOWNER TO RESPOND WITHIN SEVEN DAYS TO ANY PAYMENT PLAN THEY WISH TO ENTER OR OTHER OPTION TO EXTINGUISH THE DEBT AND RELATED FORECLOSURE ACTION. THE HOMEOWNER WILL ALSO BE APPRISED OF ALL COSTS TO BE INCURRED DURING THE FORECLOSURE BY LINE ITEM CHARGE INCLUDING THE RATE OF INTEREST ON UNPAID DEBT.
7. THE CAP ON THE HOA ASSESSED INTEREST RATE IS EIGHT PERCENT.
8. THE COLLECTION AGENCY, MANAGEMENT COMPANY, LEGAL ENTITIES MUST GAIN HOA BOARD APPROVAL ON ALL COLLECTION, LIEN AND FORECLOSURE ACTIONS AND THE RELATED CHARGES AND FEES.
9. THE HOA HAS NO MORE THAN SIX MONTHS TO COMPLETE FORECLOSURE ACTION INCLUDING HOME SALE FROM THE TIME BEGINNING WHEN THE HOMEOWNER IS NOTIFIED THAT SUCH ACTION WILL BE FILED OR FROM THE DATE OF DEFAULT OF THE HOMEOWNER'S OBLIGATIONS UNDER THE PAYMENT PLAN. IF SUCH ACTION IS NOT COMPLETED THE HOA IS SUBJECT A PENALTY THAT INVOLVES CANCELLATION OF THE HOMEOWNER'S DEBT AND THUS INVALIDATING THE FORECLOSURE.
10. A PENALTY OF UP TO \$10,000 WILL BE ASSESSED TO ANY MANAGEMENT COMPANY OR LEGAL FIRM FOUND TO BE PARTICIPATING IN OR AWARE OF IN NON-COMPLIANCE WITH HOA FORECLOSURE RULES WITH SUCH AWARD GOING TO THE HOMEOWNER.
11. HOAs WILL NOT BE ABLE TO INCLUDE ANY ADD-ON ADMINISTRATIVE COSTS, FEES, FINES, INTEREST CHARGES OR OTHER AMOUNTS EXCLUDING LEGAL COSTS IN THE AMOUNT OWED BY THE HOMEOWNER THAT EXCEEDS THREE TIMES THE INITIAL AMOUNT OWED. LEGAL FEES WILL NOT EXCEED THE AVERAGE RATE FOR ATTORNEY FEES IN THE FORECLOSURE PROCESS TO BE DETERMINED BY DORA.
12. THE HOMEOWNER CAN CONTEST ANY CHARGE RELATED TO THE DEBT IN A LIEN OR FORECLOSURE THROUGH A PROCESS SET UP BY DORA THAT WILL RENDER A DECISION TO END THE FORECLOSURE ACTION OR DEEM THE FORECLOSURE TO BE JUSTIFIED AND IN COMPLIANCE WITH THE LAW.
13. ANY LEGAL FEES BILLED TO THE HOA BY A LAWYER, LAW FIRM OR MANAGEMENT COMPANY IN EXCESS OF STATED LIMITS IN THIS LAW WILL

NOT BE CONSIDERED VALID AND IN ACCORDANCE WITH THE LAW AND AS SUCH ARE NOT BILLABLE TO THE HOA OR HOMEOWNER.

14. THE PENALTY TO AN HOA BOARD FOR NON-COMPLIANCE WITH HOA FORECLOSURE LAW CAN INVOLVE DENYING THEIR ABILITY TO ASSESS FINES FOR COVENANT VIOLATIONS, IMPOSE LIENS AND/OR INITIATE ANY FORECLOSURE ACTIONS UNTIL THEY DEMONSTRATE THE ABILITY TO COMPLY WITH THE LAW, CANCELLATION OF HOMEOWNER DEBT AND FORECLOSURE ACTION AND REMOVAL OF BOARD MEMBERS THAT WERE INVOLVED DIRECTLY WITH THE VIOLATION. BOARD MEMBERS WOULD NOT BE SUBJECT TO FINANCIAL LIABILITY.
15. A FORECLOSED HOME CAN NOT BE SOLD AT ANY AUCTION FOR LESS THAN 80% OF MARKET VALUE. THE MARKET VALUE WILL BE DETERMINED BY AN APPRAISER WITH THE COST TO THE HOMEOWNER.
16. A HOMEOWNER CAN HIRE THEIR OWN APPRAISER IF THEY WISH TO CHALLENGE THE MARKET VALUE SELLING PRICE AT THE FORECLOSURE AUCTION BUT SUCH EXPENSE IS THE HOMEOWNERS.
17. DORA WILL DETERMINE THE MAXIMUM LEGAL COSTS THAT CAN BE ASSESSED A HOMEOWNER AND CHARGED BY A LEGAL ENTITY THROUGH A MARKET ANALYSIS EACH YEAR.
18. AN HOA MUST NOTIFY THE MORTGAGE COMPANY OF ANY FORECLOSURE ACTION (THIS IS TO AVOID ISSUES RELATED TO THE HOA SUPER LIEN THAT CAN CANCEL ANY CLAIM BY A MORTGAGE COMPANY TO THE HOME SALE PROCEEDS). NOTIFICATION WILL BE BY CERTIFIED MAIL WITH THE COST ASSESSED TO THE HOMEOWNER.
19. REFERRING A DEBT TO A COLLECTION AGENCY MUST BE APPROVED BY THE HOA BOARD WITH ANY SUCH FEES LIMITED TO XXXXXXXXXXXXX
20. ANY COURT APPROVING A FORECLOSURE THAT HAS NOT COMPLIED WITH THESE FORECLOSURE RULES WILL BE SUBJECT TO A FINE NOT TO EXCEED \$10,000 WITH SUCH PROCEEDS AWARDED TO THE HOMEOWNER.
21. ANY FORECLOSURE ACTION NOT IN ACCORDANCE WITH THIS LAW WILL RESULT IN THE CANCELLATION OF DEBT THAT LED TO FORECLOSURE AND THUS THE FORECLOSURE ACTION.
22. THE HOA BOARD WILL BE REQUIRED TO REVIEW AND APPROVE ON A MONTHLY BASIS ALL ACTIVE FORECLOSURES AND RELATED COSTS.
23. HOMEOWNERS MUST BE NOTIFIED BY PROCEDURES PREVIOUSLY DEFINED OF THE APPROVAL OF ANY FORECLOSURE ACTION WITHIN SEVEN DAYS OF APPROVAL.

24. HOME EVICTION ACTIONS MUST BE PROVIDED TO THE HOMEOWNER AND IN THE CASE OF A RENTAL PROPERTY ALSO TO THE RENTER NOTIFYING THEM OF THE PLANNED DATE OF EVICTION. NOTICE WILL BE SERVED NO LESS THAN TWO WEEKS PRIOR TO THE EVICTION DATE.
25. HOMEOWNERS WILL BE PROVIDED THESE FORECLOSURE RULES AT LEAST ONCE EACH YEAR, INTEGRATE THEM INTO THEIR GOVERNING DOCUMENTS AND NEW HOMEOWNERS WILL BE INFORMED OF SUCH PROCEDURES WITHIN TWO WEEKS OF OCCUPANCY.
26. HOAs WILL USE ANY FORECLOSURE SPECIALTY COMPANY THAT CAN PROVIDE COST SAVINGS TO THE HOA AND/OR HOMEOWNER VS THE COST OF USING THEIR OWN ATTORNEY OR MANAGEMENT COMPANY. THE COMPANY WILL BE SUBJECT TO ALL RULES AND PENALTIES UNDER THIS LAW.
27. THE HOA CAN'T INITIATE ANY FORECLOSURE ACTION ON DEBT RESULTING FROM THE DIRECT BILLING TO A HOMEOWNER BY THEIR MANAGEMENT COMPANY OR LEGAL FIRM OR ANY VENDOR ASSOCIATED WITH THE HOA. THIS LAW ONLY RELATES TO FORECLOSURES INITIATED DUE TO DEBT OWED THE HOA. ADMINISTRATIVE COSTS, INTEREST CHARGES, FINES, AND FEES IMPOSED BY A COLLECTION AGENCY, MANAGEMENT COMPANY OR LEGAL FIRM ARE NOT CONSIDERED DIRECT BILLINGS FROM THE MANAGEMENT COMPANY OR LEGAL FIRM.
28. ANY COLLECTION AGENCY, METRO DISTRICT OR OTHER ENTITY INVOLVED IN BILLINGS AND COLLECTION ACTIVITY WITH AN HOA MUST COMPLY WITH THIS LAW OR BE SUBJECT TO FINES.
29. A HOMEOWNER BRINGING CHALLENGE TO ANY PROCESS OR ACTION IN THIS LAW MUST PRESENT THE STATE ENTITY THAT WILL HEAR THE COMPLAINT WITH THE EVIDENCE IN TO SUPPORT THE VIOLATION OF THIS LAW INCLUDING ALL NOTICES, EMAILS, CERTIFIED MAIL, TEXT MESSAGE, INVOICES, EVIDENCE OF DENIAL/OFFERING OF A PAYMENT PLAN AND OTHER INFORMATION TO SUPPORT THE COMPLAINT. ABSENCE OF SUPPORTING EVIDENCE OF A COMPLAINT BY THE HOMEOWNER WILL RESULT IN THE COMPLAINT NOT BEING REVIEWED AND JUDGE UPON.
30. THE DISPUTE RESOLUTION AUTHORITY UNDER THIS LAW WILL BE WITHIN DORA. THE AUTHORITY WILL HEAR HOMEOWNER FORECLOSURE AND LIEN COMPLAINTS AND RENDER DECISION AND WILL ALSO BE EMPOWERED TO LEVY FINES FOR NON-COMPLIANCE AND OR THE REMOVAL OF A BOARD MEMBER(S) FOR NON-COMPLIANCE WITH THIS

LAW. THERE WILL BE NO APPEAL PROCESS RELATED TO THESE DECISION OR PENALTIES.

- 31. THE HOA REGISTRATION PROCESS SHOULD REQUIRE THAT EACH HOA ACKNOWLEDGE THIS PROCESS INTO THEIR GOVERNING PROCESS AND WILL COMPLY WITH THE REQUIREMENT TO APPRISE ALL HOMEOWNERS OF SUCH POLICY AT LEAST ONCE EACH YEAR.**
- 32. PRIOR TO THE FORECLOSURE HOME SALE AUCTION THERE WILL BE A CERTIFICATION AND NOTIFICATION TO THOSE CONDUCTING THE AUCTION THAT THE HOME WILL NOT BE SOLD FOR LESS THAN 80% OF MARKET VALUE AND BE APPRISED OF SUCH SALE PRICE BASED ON THE APPRAISAL COMPLETED THROUGH THE HOA.**
- 33. THE HOMEOWNER WILL BE PROVIDED A COMPREHENSIVE INVOICE OF ALL THEIR DEBT OBLIGATIONS BY LINE ITEM THREE DAYS PRIOR TO THE AUCTION INCLUDING AUCTION FEES, LEGAL FEES, ADMINISTRATIVE OVERHEAD, AND OTHER COSTS AND THE RECIPIENT OF SUCH CHARGES.**
- 34. THE HOMEOWNER WILL BE NOTIFIED NO LESS THAN TWO WEEKS PRIOR TO THE DATE OF EVICTION WHICH MUST BE AT LEAST TWO WEEKS AFTER THE HOME IS SOLD AT AUCTION.**
- 35. HOA FORECLOSED HOMES CAN'T BE PURCHASED BY ANYONE ASSOCIATED WITH THE LEGAL FIRM, MANAGEMENT COMPANY OR HOA BOARD MEMBER OR THEIR RELATIVE THAT WERE INVOLVED IN THE FORECLOSURE ACTION.**
- 36. DEFINITIONS OF FINES, FEES AND FORECLOSURES AS NEEDED.**