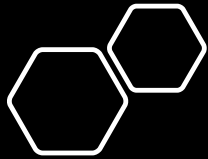


# Board Responsibilities After HB22-1137



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Thank you for joining us, the presentation will begin shortly.



# Board Responsibilities After HB22-1137

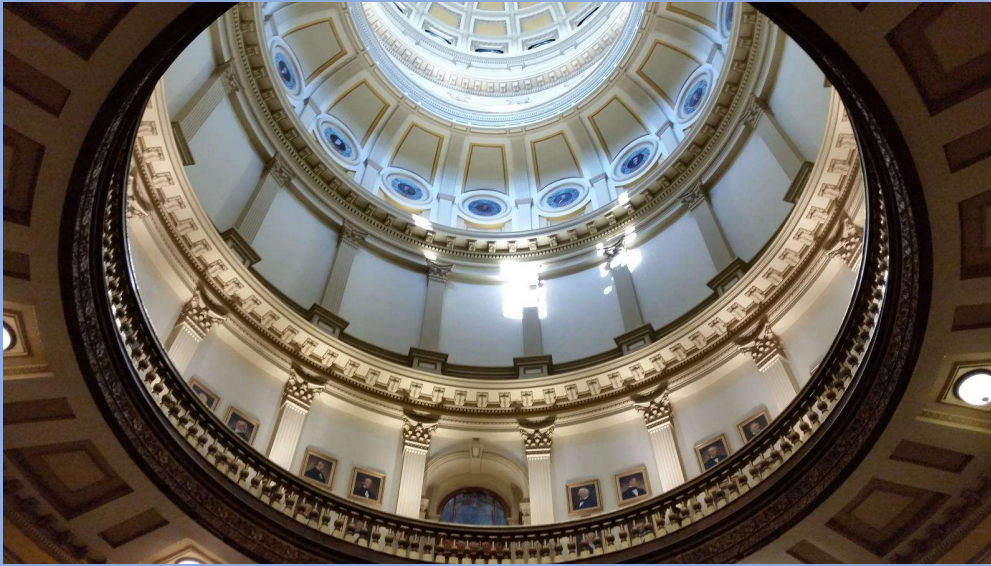
The purpose of this presentation is to discuss the recently imposed requirements for boards when collecting assessments and providing notices of violations to community members after HB22-1137 became law.



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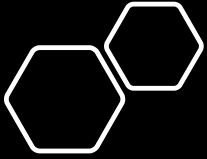
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## HOA Information & Resource Center

Presented By:

David L. Donnelly, Manager of Education, Communication & Policy Program  
Nick Altmann, HOA Information Officer  
Amanda Lopez, HOA Information Support Specialist

1560 Broadway, Ste. 925, Denver, Colorado 80202



# Disclaimer:

The information provided during this presentation is for educational purposes only and is not meant to provide, nor should it be construed as legal advice.

**Any legal questions should be directed to a qualified attorney licensed in Colorado.**



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# What Is the HOA Information & Resource Center?

- What the HOA Information & Resource Center does:
  - Provides information to homeowners regarding their basic rights and responsibilities under the Colorado Common Interest Ownership Act (“CCIOA”).
  - Gathers, analyzes, and reports information through complaints and HOA registrations.
  - Creates resource materials.
  - Provides education and forums.
  - Provides a website with information for the public.
  - Registers HOAs pursuant to §38-33.3-401(1), C.R.S.
  - Provides an Annual Report to the Legislature.
- What the HOA Information & Resource Center does not do:
  - Is **not** a regulatory program.
  - Does **not** mediate/arbitrate.
  - **Cannot** provide legal advice.
  - Does **not** act as an advocate.
  - **Cannot** assess fines or penalties.
  - Does **not** enforce an HOA’s failure to register.



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Who Is This  
Presentation  
For?



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- Home Owners
- Board Members
- Community Association Managers

# Colorado General Assembly

The second regular session of the seventy-third General Assembly convened on January 12, 2022 and was adjourned on May 11, 2022



# The 73<sup>rd</sup> General Assembly and Common Interest Communities

- In 2022, many bills affecting Common Interest Communities were proposed. However, only five bills ultimately became law:
  - HB22-1040 Home Owners' Reasonable Access To Common Areas
  - HB22-1137 Homeowners' Association Board Accountability And Transparency
  - HB22-1139 Home Owners' Associations Cannot Regulate Use Of Public Rights-of-way
  - HB22-1314 Towing Carrier Nonconsensual Tows
  - SB22-059 Home Owners' Association Voting Proxy Limitations
- This presentation will focus on HB22-1137.
- For this presentation, we will refer to the bill as HB22-1137.



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# **HB22-1137: Homeowners' Association Board**

## **Accountability and Transparency**

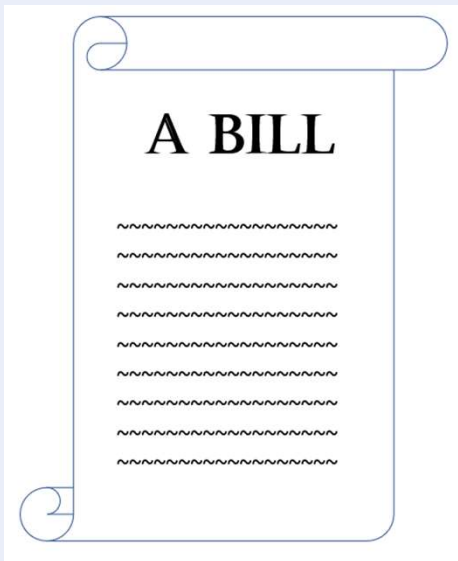
- HB22-1137 is a complex and comprehensive bill that covers a lot of information regarding HOA collections, notices of violations, permissible interest rates, and access to the judicial system.
- A common misconception about HB22-1137 is that it was a direct reaction to the media and press surrounding foreclosures. This is not the case though. The bill was being worked on prior to these news stories.

## Media and Press

**60 Green Valley Ranch homes facing possible foreclosure by HOAs and metro district**

**They Faced Foreclosure Not From Their Mortgage Lender, but From Their HOA**

**Green Valley Ranch HOA filed 50 foreclosures in 2021, city says**

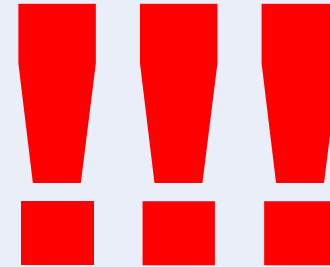


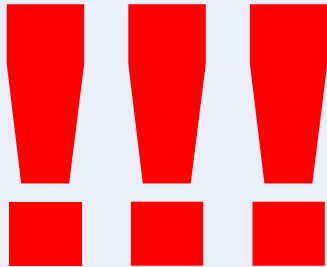
## Prime Sponsors for the bill

- Representative Naquetta Ricks
- Representative Mary Bradfield
- Senator Julie Gonzales
- Senator James Coleman

# New Vocabulary And Concepts

- **Preferred Language:** A unit owner may notify the association if the unit owner prefers that correspondence and notices from the association be made in a language other than English.
  - If a Preferred Language is identified by a unit owner, notices of delinquency and notice of violation must be delivered to the unit owner in English AND the Preferred Language.
  - HB22-1137 is silent regarding who is responsible to pay for translation services.





## New Vocabulary And Concepts

- **Designated Contact**: A unit owner is permitted to identify another person to serve as a Designated Contact for the unit owner. In communications from the association, the Designated Contact shall receive the same communications as the unit owner.
  - The Designated Contact should also receive the correspondence in the same manner as the unit owner. For example, if the association mails a notice of violation to the unit owner by certified mail, the Designated Contact should also receive the correspondence by certified mail.
  - Associations should establish a manner by which unit owners can identify their Designated Contact.

# Communication Record Keeping

- Associations have a new responsibility pursuant to HB22-1137. While many associations already did this, HB22-1137 makes it the responsibility of the association to keep records of any attempts to contact a unit owner.
- Records should be in writing.
- Records should include, at a minimum:
  - Date,
  - Time, and
  - Method of Contact.



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# Past Due Assessments/ Delinquency

- Notices of Delinquency must be:
  1. Sent by certified mail, return receipt requested
  2. Physically posted at the owner's unit, AND
  3. Sent by first class mail, text message, or email
- Notices MUST be sent in English and any Preferred Language.
- Notices MUST be sent to an identified Designated Contact.



# Notice of the Right to a Payment Plan

- In addition to the requirement that notices include an advisement that the unit owner has the right to a hearing with the board, the notice ***MUST ALSO*** advise the unit owner of the right to a repayment plan.
- Duration: At least eighteen (18) months.
- Payments: At least twenty-five dollars (\$25.00) per month.



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# Subsequent Notices

- Monthly, the association must send owners with delinquencies an itemized list of all assessments, fines, fees, and other charges.



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# How Are Payments Applied?

- The association must first apply payments to the assessments owed, and then to fines, fees, and other charges.



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# When Can the Association Pursue Legal Action?

- The association can pursue a legal action:
  - If the unit owner does not enter into a payment plan (and does not pay)
  - If the unit owner does have a payment plan, the unit owner fails to pay at least three monthly installments.
- The association must have a validly adopted written policy governing the imposition of fines AND the association MUST also follow that policy.



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# **When Can a Board Refer a Unit Member to an Attorney or Collection Agency?**

- Before HB22-1137, association boards or their Community Association Managers could retain counsel at any time. This allowed the association to begin to incur legal fees much earlier than what is allowed now.
- HB22-1137 amended those requirements. Now, boards must take certain action in an executive session BEFORE sending a unit owner to collections.
  - The board is required to vote in a closed hearing (executive session) to refer a unit owner's account to an attorney or collection agency.
  - The unit owner is allowed to request the results of that vote. This is unlike other actions taken in executive session.



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# What is an Executive Session?

CCIOA does allow for closed-door sessions of the Executive Board under specific circumstances. When in executive session, the matters to be discussed shall ONLY include the following:

- (a) Matters pertaining to employees of the association or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the association;
- (b) Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;
- (c) Investigative proceedings concerning possible or actual criminal misconduct;
- (d) Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;
- (e) *Any matter, the disclosure of which would constitute an unwarranted invasion of individual privacy, including a disciplinary hearing regarding a unit owner and any referral of delinquency; except that a unit owner who is the subject of a disciplinary hearing or a referral of delinquency may request and receive the results of any vote taken at the relevant meeting; (emphasis added)*
- (f) Review of or discussion relating to any written or oral communication from legal counsel."

See § 38-33.3-308, C.R.S. of CCIOA.



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# Notice of Violation

- HB22-1137 breaks down two (2) types of violations (discussed further in the next few slides)
- No daily fines
- No foreclosure on balances that are only comprised of fines, interest, late fees, or attorney fees.

# Health & Safety Violations

- The association is permitted to make a “*reasonable*” determination whether a violation threatens the “public health and safety”.
- A notice of violation shall be delivered to the unit owner in English and any Preferred Language.
- The notice should inform the unit owner has 72 hours to cure the violation, or the association may fine the unit owner.
- The association may inspect after the 72-hour period to determine if the violation is cured.
- If not cured, the association may fine the unit owner every other day.
- If not cured, the association may take legal action against the unit owner for the violation.



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# **Other Than Health & Safety Violations**

- Written notice shall be provided to the unit owner in English and any Preferred Language by certified mail, return receipt requested.
- Notice shall inform that the unit owner has 30 days to cure the violation.
- If the unit owner does not cure within 30 days, the association may fine the unit owner.
- If the unit owner does not cure within 30 days, the association shall grant the unit owner an additional 30 days to cure the violation before taking any legal action.
- Fines imposed for violations shall not exceed \$500.00



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# **How Does a Unit Owner Cure A Violation?**

- The unit owner may, within the period to cure, provide visual evidence that the violation has been cured. Consider personal visual inspection or photograph from unit owner.
- If the unit owner does not include visual evidence, the association shall inspect the unit as soon as practicable to determine if the violation has been cured.
- When a unit owner does not provide notice of cure, the association shall inspect the unit within seven (7) days after the expiration of the thirty (30) day cure period. If the association determines that the violation was not cured after inspection, it may take legal action after two 30 day cure periods.



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# **What Does the Association Do Once A Violation is Cured?**

- Written notice shall be provided to the unit owner in English and the Preferred Language.
- The notice shall include:
  - That the unit owner will not be further fined for the violation
  - That a final outstanding fine balance is still owed to the association, if any, and what that balance is.
- Thereafter, on a monthly basis, the association shall send by first-class mail and by email if the association has a relevant email address, an itemized list of all assessments, fines, fees, and charges until paid in full. The itemized list should be sent in English and any Preferred Language. The itemized list should be delivered to the unit owner and to the Designated Contact.



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# Miscellaneous Issues

- *The Association shall not:*
  - Charge a fee to provide a unit owner a statement of what is owed.
  - Foreclose an assessment debt consisting only of fines or collection costs, or attorney fees.
- No board member, employee of a Community Association Management Company representing the Association, employee of a law firm representing the association, or immediate family member of these persons may purchase the foreclosed unit.
- Interest on any association unpaid assessments, fees, or fines cannot be greater than 8% per year (*reminder on next slide*)
- *If an association violates any foreclosure laws, the affected unit owner may file a civil suit to seek damages within five (5) years after the violation occurred. Damages awarded may be up to \$25,000.00 plus costs and reasonable attorney's fees.*



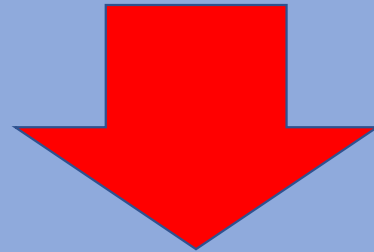
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# Interest Rates

Before HB22-1137, interest rates on assessments, fines, penalties, and fees was allowed to be as high as twenty-one percent (21%).



HB22-1137 limits interest rates to eight percent (8%).



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# Access to Small Claims Court

- HB22-1137 expands access to small claims court for association disputes. Some major considerations about small claims court are:
  - Amount in Controversy: \$7,500.00.
  - Plaintiff cannot have an attorney unless Defendant has one.
  - Relaxed Rules of Evidence
  - Simplified Procedure
- For more information on small claims court, please visit: the [Colorado Judicial Branch Small Claims Cases website](#).

# Access to Small Claims Court

- The new law allows cases relating to declarations, bylaws, covenants, or other governing documents, in relation to disputes arising from assessments, fines, or fees owed to the association to be enforced in small claims court. See C.R.S. § 13-6-403(1)(b)(I).
- The new law allows a party to enforce a restrictive covenant on residential property when the amount required to comply with the covenant does not exceed seven thousand five hundred dollars (\$7,500.00). See C.R.S. § 13-6-403(1)(b)(II).
- The new law allows for replevin, if the value of the property sought does not exceed seven thousand five hundred dollars (\$7,500.00). Replevin is a legal remedy generally defined as a procedure by which seized goods or property may be restored to their owner if taken wrongfully or unlawfully, and to obtain compensation for resulting losses. See C.R.S. § 13-6-403(1)(b)(III).
- The new law allows for a party to enforce a contract by specific performance, or to disaffirm, avoid, or rescind a contract and the amount at issues does not exceed seven thousand five hundred dollars (\$7,500.00). See C.R.S. § 13-6-403(1)(b)(IV).



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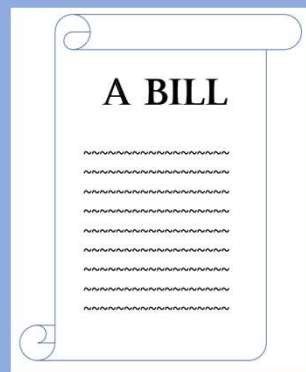
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# Legislative Summaries

- Each year, once the HOA Information & Resource Center knows what bills have become law, the HOA Center prepares legislative summaries that are designed to provide a synopsis of the new laws. These summaries are available to the public on the Division of Real Estate's website.
- In 2022, there were five primary bills, including HB22-1137, that became law which affect life in an HOA.
- Check out those summaries here:

<https://dre.colorado.gov/colorado-general-assembly-2022-legislative-updates>



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# Pro Tips

1. **Board members:** Review your governance policies which are required by § 38-33.3-209.5, C.R.S. to ensure that they comply with HB22-1137. It is rare that the Colorado General Assembly imposes these types of updates on associations, but HB22-1137 is an exception.
2. **Board Members and CAMs:** Disclose your governance policies (by way of newsletter, website, mailing) whenever a change has been made to your governance policies. **Be transparent with the community.**
3. **Unit Members:** Review your association's governance policies so you know how to exercise your rights. Understand them and ask questions.
4. **Board Members:** Do not rely on late fees, penalties, or interest to fund your community.
5. **Everyone:** And finally, stay tuned to the HOA Information & Resource Center and the Colorado General Assembly for any new bills affecting HOAs in the next Legislative Session (convening January 9, 2023)



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Check Out HOA Resources For Yourself  
At:

Web: <https://dre.colorado.gov/hoa-center>

Send Inquiries Via E-mail To:  
[dora\\_dre\\_hoainquiries@state.co.us](mailto:dora_dre_hoainquiries@state.co.us)



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# HOA Information & Resource Center

Questions?

