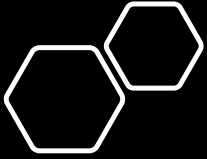


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HOA Information & Resource Center

Presented By:

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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.



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What Is the HOA Information & Resource Center?

- *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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Colorado General Assembly

The First Regular Session
of the Seventy-fifth
General Assembly
convened on January 8,
2025.



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Talking Points

- HOA Lien Overview
- House Bill 22-1137
- House Bill 24-1337



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HOA Lien Authority in Colorado



HOAs may foreclose on an assessment lien pursuant to 38-33.3-316, C.R.S.



When you purchase a home in a common-interest community (HOA), you purchase it subject to a declaration that is recorded against the title to your property.



A lien exists on your property once a penny is owed the association. A recorded paper lien is NOT necessary in order for a lien to exist against your property.



The HOA will most often “perfect” the paper lien in county records to put interested parties on notice.



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Colorado Lien Priority (Senior vs. Junior)

Type of Lien
Government real estate taxes Lien
HOA 6-month “Super Lien”
First Mortgage Deed of Trust
Remainder of HOA Lien
Second Mortgage Deed of Trust
Mechanic’s Lien (Roofer)
Judgment Lien (Electrician)



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What Part Of An HOA Lien Is Foreclosable?

- Assessments (or “HOA dues”)



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What Part Of An HOA Lien Is NOT Foreclosable?

- Late fees
- Fines of the governing documents
- Attorney fees
- Legal costs

☐ These types of charges still need to be paid in order to sell, though.



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HB22-1137: Homeowner' Association Board Accountability And Transparency

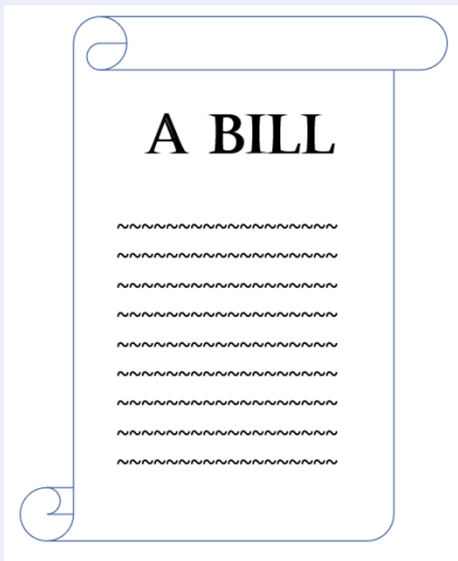
- HOA collections
- Notices of violations
- Maximum allowable interest rates
- Access to the judicial system



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Prime Sponsors for the bill

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

New Vocabulary(1)



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- **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(2)

- **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 Records

- 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:
 - Sent by certified mail, return receipt requested;
 - AND sent by first class mail, text message, or email (prior to the passage of HB24-1233)
- Notices **MUST** be sent in English and any Preferred Language.
- Notices **MUST** be sent to an identified Designated Contact.
- Physical posting at unit **NO LONGER REQUIRED**



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Payment Plans

- 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 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?

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;



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What is an Executive Session?(2)

(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

(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 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 written 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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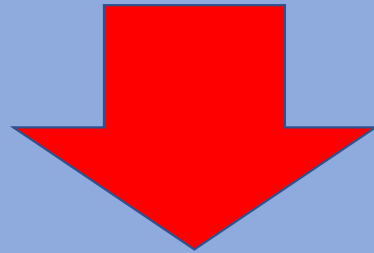
What Does the Association Do Once A Violation is Cured?

- 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. 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.



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(1)

- 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).

HB22-1137

Takeaways

- A payment plan must be offered by the association to the delinquent unit owner prior to commencing any legal action against the unit owner.
- 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.

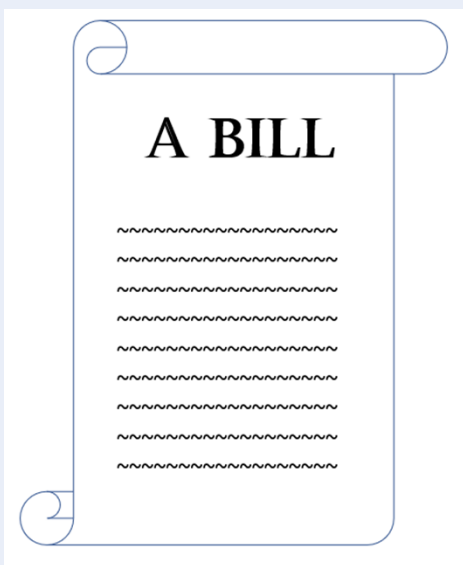


HB24-1337: Real Property Owner Unit Association Collections

- Attorney Fees
- Right Of Redemption
- Prohibition Of Certain Persons From Purchasing Foreclosed Units
- Foreclosure Prohibitions
- Right To Mediation



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Prime Sponsors for the bill

- Representative Iman Jodeh
- Representative Jennifer Bacon
- Senator James Coleman
- Senator Tony Exum

HB24-1337 - “Real Property Owner Unit Association Collections”

- This bill limits the reimbursement amount for attorney fees the HOA may seek to collect from a unit owner who is delinquent on assessments to 1) \$5,000, or 2) 50% of the original money owed, whichever is less.
- The same monetary restriction of attorney fees applies for any association attempting to defend or enforce its rules or bylaws in court and when the association prevails in the same matter.
- For more information see 38-33.3-123, C.R.S.



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HB24-1337 - Further Restrictions On When An HOA May Foreclose

- Per the new bill, an association may only foreclose on a lien as long as the association has performed one of the three (3) following functions:
 - 1) Obtained a personal judgment against the unit owner in a civil action; or
 - 2) Attempted to bring a civil action against the unit owner but was prevented by the death of or incapacity of the unit owner; or
 - 3) Attempted to bring a civil action against the unit owner but the association was unable to serve the unit owner within 180 days.



HB24-1337 - Right of Redemption

- The new bill also establishes a right of redemption for 180 days following a foreclosure sale. A person wanting to redeem the unit under the bill must file a notice of intent to redeem within 30 days after the foreclosure sale.
- The following people have the right of redemption in order of priority:
 1. The unit owner
 2. A tenant of the unit
 3. A nonprofit entity whose primary purpose is the development or preservation of affordable housing
 4. A community land trust
 5. A cooperative housing corporation
 6. The state of Colorado or a political subdivision of the state of Colorado



HB24-1337 - Right of Redemption

- If two (2) or more people with the right of redemption attempt to redeem the property, the person with the highest priority is awarded the property and the lower priority rights of redemption are extinguished.



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HB24-1337 - Right to Mediation

Finally, the bill provides that at least 30 days before initiating legal action to foreclose a lien, an association must provide notice to the unit owner that the unit owner has the right to engage in mediation prior to litigation. To participate in mediation, both parties must:

- (I) Select a mutually agreeable mediator knowledgeable about HOA law and common interest community disputes; and
- (II) Schedule the mediation session within thirty days of initiating legal action to foreclose a lien.



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HB24-1337 - Right to Mediation

- If the unit owner fails to show up to the scheduled mediation session, the association may still file a civil action



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HB24-1337 - Notice Of Foreclosure To All Lienholders

- At least thirty days before initiating legal action to foreclose a lien, the association must provide written and electronic notice to all lienholders identified on the delinquent unit owners property records of the pending legal action for foreclosure. The notice must include the amount of any outstanding assessment and other money owed.



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HB24-1337 - Prohibitions On Who May Purchase Foreclosed Unit

- If a unit has been lawfully foreclosed upon, the following persons shall not purchase a foreclosed unit:
 1. A member of the executive board;
 2. An employee of a community association management company representing the association;
 3. An employee of a law firm representing the association;
 4. An immediate family member of an executive board member, community association management company employee, or law firm employee; or
 5. A community association management company representing the association.
- Five year prohibition prior to the date of foreclosure sale.
- A person that purchases a unit through foreclosure sale absorbs any covenants or limitations on the use or sale of the unit to which the previous unit owner was subject.



HB24-1337 - Effective Date Of New Law

- The law is effective August of 2024.
- If a foreclosure action is filed in September 2024, this law applies. If a foreclosure action is filed in July of 2024, this law does NOT apply.



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Section 38-33.3-316 and 317, C.R.S.

- An HOA may only pursue foreclosure on liens equaling or exceeding six months of common expense assessments based on the periodic budget adopted by the association.
- The decision to pursue foreclosure on a delinquent owner must be formally memorialized in a recorded vote by the executive board authorizing the filing of a legal action. The vote must be producible to a unit owner upon a properly submitted request in accordance with 38-33.3-317, C.R.S.



Remedies Available to Unit Owners

- If an association has violated any foreclosure laws, the unit owner in relation to whom the violation occurred may, within five years after the violation occurred, file civil suit in a court of competent jurisdiction against the association to seek damages. The court may award the unit owner damages in an amount of up to twenty-five thousand dollars, plus costs and reasonable attorney fees, if the unit owner proves the violation by a preponderance of the evidence.
- See 38-33.3-316.3(5), C.R.S.



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Foreclosures and Legal Help

Foreclosures

• Emergency Mortgage Assistance Program

- The Emergency Mortgage Assistance Program uses federal Homeowner Assistance Funds to help homeowners affected by the COVID-19 pandemic, get caught up on past-due housing/mobile home payments, property taxes, lot rent, insurance and housing utilities. Visit the Department of Local Affairs Division of Housing website at <https://doh.colorado.gov/emergency-rental-assistance>

• Housing Counseling Assistance Program

- Free service to all Coloradans where residents can be connected to local housing resources like financial assistance for rent and mortgages or to be put in touch with legal assistance to prevent a looming eviction. Individuals can access the program at the [Brothers Redevelopment website](#) or by calling 844-926-6632.



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Foreclosures and Legal Help

Legal Help

- Colorado Legal Services -
<https://www.coloradolegalservices.org/>
- Colorado Poverty Law Project -
<https://www.copovertylawproject.org/>
- Community Economic Defense Project -
<https://cedproject.org/>
- Centro San Juan Diego, Archdiocese of Denver -
<https://centrosanjuandiego.org/en/legal-night/>



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More HOA Resources At:

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

Send Inquiries Via E-mail To:
dora_dre_hoainquiries@state.co.us



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HOA Information & Resource Center

Thank You!
Questions?

