

ISSUE #1

MARKUP #1 ->

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well as any costs incurred by the attorney on the Association’s behalf, promptly upon receipt of the monthly invoice from the attorney.

The Association may require, without starting legal proceedings, an Owner to reimburse the Association for collection costs, attorney’s fees, or other costs resulting from the Owner failing to timely pay assessments or other money owed.

Judicial Foreclosure. The Association may foreclose its lien only if the delinquency is equal or higher than six (6) months of common expenses assessments based on a periodic budget adopted by the Association. Each foreclosure action has to be approved by the Board of Directors by resolution or a recorded vote taken at a Board meeting.

The Association may not foreclose on a Unit if the debt securing the lien consists only of one (1) or both of the following:

- (a) Fines that the Association has assessed against the Owner as a result of covenant violations; or
- (b) Collection costs or attorney fees that the Association has incurred and that are only associated with assessed fines as a result of covenant violations.

The Association shall not commence a legal action to initiate a foreclosure proceeding until the Association has:

- (a) Obtained a personal judgment against the Owner in a civil action;
- (b) Attempted to bring a civil action against the Owner but was prevented by the death or incapacity of the Owner;
- (c) Attempted to bring a civil action against the Owner but the Association was unable to serve the Owner within one hundred eighty (180) days; or
- (d) The Owner is in a civil action bankruptcy.

These foreclosure requirements:

- (a) Apply to a Unit owned by an individual who occupies the Unit as a principal address:
 - (i) Do not apply to a Unit owned by an entity other than an individual or a Unit that is not occupied as the Unit Owner’s principal residence; and

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. vi (p. 7): Enforcement, fining, interest, or foreclosure provision violates Colorado HB 22-1137 (C.R.S. § 38-33.3-209.5) limits on cure periods, \$500 fine cap, 8% interest cap, or prohibition on foreclosing fine liens.

Statutory / Legal Reference: C.R.S. §§ 38-33.3-209.5 & 38-33.3-316 (HB 22-1137)

Statutory Comparison: Under C.R.S. § 38-33.3-209.5 (as amended by HB 22-1137), for covenant violations that do not threaten public health or safety, the association must: (1) notify the unit owner by certified mail, return receipt requested; (2) grant two consecutive 30-day periods to cure before turning the matter over to an attorney or legal action; (3) cap total fines for a particular covenant violation at \$500; (4) cap delinquency interest at 8% per annum; and (5) refrain from foreclosing on any assessment lien consisting solely of fines, fees, or collection costs.

CURRENT WORDING IN DOCUMENT:

olations. The Association shall not commence a legal action to initiate a foreclosure proceeding until the Association has:
(a) Obtained a personal judgment against the Owner in a civil action;
(b) Attempted to bring a civil action against the Owner but was prevented by the death or incapacity of the Owner;
(c) Attempted to bring a civil action against the Owner but the Association was unable to serve the Owner within one hundred eighty (180) days; or
(d) The Owner is in a civil action bankruptcy.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to C.R.S. §§ 38-33.3-209.5 and 38-33.3-316 (HB 22-1137), for any covenant violation that does not threaten public health or safety: (a) the Association shall send written notice via certified mail, return receipt requested, providing the owner two (2) consecutive thirty (30) day cure periods; (b) the total amount of fines imposed for any single non-health/safety violation shall not exceed Five Hundred Dollars (\$500.00); (c) delinquent assessments shall bear interest at no more than eight percent (8%) per annum; and (d) the Association shall not foreclose an assessment lien consisting solely of fines, collection costs, or attorney fees.