

HB22-1137

Signed By the Governor on June 3, 2022

[CONCERNING PRACTICES OF UNIT OWNERS' ASSOCIATIONS, AND, IN CONNECTION THEREWITH, AUTHORIZING THE ENFORCEMENT OF CERTAIN MATTERS REGARDING UNIT OWNERS' ASSOCIATIONS IN SMALL CLAIMS COURT AND LIMITING THE CONDUCT OF UNIT OWNERS' ASSOCIATIONS IN COLLECTING UNPAID ASSESSMENTS, FEES, AND FINES](#)

[Click the hyperlink above for the actual text of the signed act]

I. Synopsis: The Act changes multiple sections of CCIOA and Title 13 of the Colorado Revised Statutes. The bill addresses several issues that Colorado lawmakers identified as needing their attention. These include delinquency notice requirements, allocation of fees and fines, interest rates, foreclosure, and access to Small Claims Court in Colorado courts.

- A. **Unit Owner Delinquency:** When an association pursues a delinquent unit owner, there are new requirements that the association must follow:
- a. In addition to sending a notice of delinquency to the unit owner as is required by current law, the association must ALSO attempt to contact the unit owner by at least two other methods of communications.
 - i. Section 38-33.3-209.5(5)(a)(V) sets forth the existing requirements for notice of delinquency that is required to be sent to the unit owner, including sending it by certified mail with return receipt requested and physically posting a copy of the Notice of Delinquency at the unit owner's unit.
 - ii. Now, the law requires the association also must contact the unit owner by one of the following means:
 1. First-class mail,
 2. Text message to the number that the association has on file because the unit owner has provided the cellular number to the association, or
 3. E-mail to the e-mail address that the association has on file because the unit owner has provided the e-mail address to the association.
 - iii. **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.
 1. *The association board is required to prepare a translation of any delinquency notices or correspondence into the preferred language for the Unit Owner.*
 2. *Note that this is a legal notice and therefore, utilization of a free online translation service may not be sufficient. Consultation with a professional translator might be required.*

3. *Association boards may consider collecting Preferred Language information at the time a unit owner purchases a home in the community.*
- iv. Designated Contact: A unit owner is now permitted to identify another person to serve as a Designated Contact for the unit owner. The Designated Contact shall receive the same type of notice of delinquency required to be sent to the unit owner, including sending it by certified mail with return receipt required AND any notice of delinquency must be the same as what is provided to the unit owner, except that the unit owner must receive the correspondence and notices in the Preferred Language, if any has been identified.
 1. *The association is allowed to determine the manner in which a unit owner is required to identify their Designated Contact to the association.*
 2. *Association boards may consider collecting this information at the time a unit owner purchases a home in the community.*
- b. The association has a responsibility to keep records of its attempts to contact the unit owner. Although the law does not say that records need to be kept in writing, what else is there? The record should include, at a minimum: (a) the date, (b) the time, and (c) the method of contact.
- c. Referral to a Collection Agency/Attorney: The law requires that the association, its Community Association Manager, or its other agent, hold a hearing and the board of directors vote to refer the matter to a collection agency or attorney. The vote must take place during an executive session. Board Members must still record this vote. See section 38-33.3-209.5(1.7)(a)(II). *Board members should update their Conduct of Meetings governance policy to allow an affected unit owner to receive the results of any vote taken at the relevant meeting.* See section 38-33.3-308(4)(e).

B. Association Fees and Fines:

- a. Associations are not allowed to impose the following *on a daily basis*:
 - i. Late Fees against a unit owner, or
 - ii. Fines assessed for violations of the declaration, bylaws, covenants, or other governing documents.
- b. No association may fine any unit owner for an alleged violation unless the association has a validly adopted written policy governing the imposition of fines and the association follows the policy. The policy must contain:
 - i. A notice regarding the nature of any alleged violation, the required actions to cure the alleged violation, and the timeline

for the fair and impartial fact-finding process set forth in section 38-33.3-209.5(2)(b).

- ii. The policy must also specify the interval upon which fines may be levied.
- iii. The policy must also specify that notifications of delinquency notify the unit owner that unpaid assessments may lead to foreclosure.
- iv. The policy must also specify that notifications of delinquency notify the unit owner of the steps that the association must take before the association may take legal action, including a description of the association's cure process.
- v. The policy must also specify that notifications of delinquency notify the unit owner of the types of legal action the association may take, including a description of the types of matters that the association or the unit owner may take to small claims courts. This case types include to right to:
 1. Injunctive relief,
 2. Enforce rights and responsibilities arising under the declaration, bylaws, covenants, or other governing documents. See C.R.S. section 13-6-403(a)(b)(I),
 3. Enforce a restrictive covenant on residential property. C.R.S. section 13-6-403(a)(b)(II),
 4. Replevin. See C.R.S. section 13-6-403(a)(b)(III), and
 5. Enforce a contract by specific performance, or to disaffirm, avoid, or rescind a contract. See C.R.S. section 13-6-403(a)(b)(IV).
 6. *Board members: Update your governance policy!*
- vi. If a unit owner has both unpaid assessments and unpaid fines, fees or other charges, any payments made shall first be applied to the assessments owed. See section 38-33.3-316.3(4)

C. **Violations of the Declaration, Bylaws, Covenants, or Other Governing Documents:**

- a. **Violations that Threaten the Public Safety or Health.**
 - i. The association may make a "reasonable" determination whether a violation threatens the public safety or health.
 - ii. Written notice of violation shall be delivered to the unit owner in English and any Preferred Language.
 - iii. The written notice should inform the unit owner that the unit owner has seventy-two (72) hours to cure the violation, or the association may fine the unit owner.
 - iv. The association has the right to inspect the unit to determine if the violation has been cured.
 - v. If the violation is not cured within seventy-two (72) hours, the association may:

1. Impose fines on the unit owner every other day; and
 2. May take legal action against the unit owner for the violation.
 3. *Note: The association may not pursue foreclosure against the unit owner based on fines owed.*
- b. Violations that DO NOT Threaten the Public Safety or Health.
- i. Written notice of violation shall be delivered to the unit owner in English and any Preferred Language by certified mail, return receipt requested.
 - ii. The written notice should inform the unit owner that the unit owner has thirty (30) days to cure the violation or the association may, after an inspection and determination that the unit owner has not cured the violation, fine the unit owner.
 - iii. The fines imposed for the violation may not exceed five hundred dollars (\$500.00).
 - iv. Before taking legal action against the unit owner for the violation, the association shall grant the unit owner two (2) consecutive thirty (30) day periods to cure the violation.
 - v. *Note-The association may not pursue foreclosure against the unit owner based on fines owed.*
- c. Curing the violation by the unit owner:
- i. The unit owner may, within the period to cure, provide visual evidence that the violation has been cured. *This could be a photograph or an onsite inspection.*
 - ii. 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.
- d. If no notice from the unit owner that the violation has been cured is received by the association, 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:
- i. A second thirty (30) day period to cure commences if one thirty (30) day period to cure has elapsed.
 - ii. If two (2) thirty (30) day period to cure have elapsed, the association may take legal action.
- e. Notification of Cure By Association: Once a violation has been cured, the association shall inform the unit owner in writing, both in English and any Preferred Language:
- i. That the unit owner will not be further fined for the violation, and
 - ii. That a final outstanding fine balance is still owed to the association, if any, and what that balance is.
 - iii. 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. See section 38-33.3-209.5(1.7)(c).

- D. **Foreclosure Actions**: An association is not permitted to commence a legal action to initiate a foreclosure proceeding based on a unit owner's delinquency in paying assessments UNLESS:
- a. The association has complied with sections 38-33.3-209.5 and 38-33.3-316.3,
 - b. The association has provided the unit owner with a written offer to enter into a repayment plan which authorizes the unit owner to repay the debt in monthly installments over eighteen (18) months. Nothing in the new law stops the unit owner from paying the remaining balance owed under the repayment plan at any time, but the unit owner may choose the amount to be paid each month, provided that each payment is at least twenty-five dollars (\$25.00) per month, and
 - c. Then, within thirty (30) days of the association making an offer to enter into a repayment plan, the unit owner either:
 - i. Declines the repayment plan offer, or
 - ii. Fails to pay at least three of the monthly installments within fifteen (15) days after the monthly installments were due.
 - d. Associations cannot charge a fee to provide a unit owner a statement of the total amount that the unit owner owes. See section 38-33.3-209.5(8)(b). *Board members need to update their governance policies regarding fees.*
 - e. Associations cannot foreclose an assessment lien if the debt consists of one or both of:
 - i. fines, or
 - ii. collection costs, or attorney fees incurred and that are only associated with assessed fines.
 - f. 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.
 - g. **Penalty**: 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. See section 38-33.3-316.3(5)

E. **Interest on unpaid assessments, fees, or fines**:

Interest on any association unpaid assessments, fees, or fines cannot be greater than 8% per year. C.R.S. section 38-33.3-209.5(8) and section 38-33.3-315(2). This is a large decrease from what Colorado law allowed before HB22-1137 passed which was

twenty-one percent (21%). *Board members may consider reviewing any existing governance policies or bylaws an update them accordingly to reflect this change.*

F. Small Claim Court:

The Act grants jurisdiction for unit owners and associations to address many claims in Small Claims Court. There are several different levels of courts in the State of Colorado. You have probably heard of the Colorado Supreme Court, and maybe the District Court. Small Claims Court is another type of court and has its own rules, regulations, and procedures. To get a great summary of what small claims court is all about, how to file a claim in small claims court, how to respond to a claim in small claims court, and many other resources, please visit the [Colorado Judicial Branch Small Claims Cases website](#). This website provides information, forms and what types of cases qualifies for small claims court (also known as "jurisdiction").

One of the most important facts about small claims court is that the amount in controversy, or how much you can recover in small claims court, is limited to seven thousand five hundred dollars (\$7,500.00). While you can sue for more than seven thousand five hundred dollars, (\$7,500.00), you will only be able to recover up to seven thousand five hundred dollars (\$7,500.00).

Another big thing in small claims court is whether the parties can have a lawyer present at trial. While there are exceptions, the general rule is that the plaintiff (i.e. the person starting the lawsuit) does not get to have an attorney unless the defendant (i.e. the person responding to the lawsuit) files a written notice that the defendant will be represented by an attorney.

One last aspect about the small claims court process is that the court operates with more simplified procedure, when compared to other levels of Colorado courts. The [Colorado Rules of Procedure for Small Claims Court Rules 501-521](#) can be reviewed for more details.

Now that we have a brief introduction to small claims court out of the way, it is time to address how HB22-1137 affects 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).
2. 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).
3. The new law allows for replevin, if the value of the property sought does not exceed seven thousand five hundred dollars (\$7,500.00). See C.R.S. 13-6-403(1)(b)(III). 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.

4. 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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