

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 13-0644.01 Jennifer Berman x3286

HOUSE BILL 13-1276

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A BILL FOR AN ACT

101 **CONCERNING LIMITATIONS ON THE ACTIONS A UNIT OWNERS'**
102 **ASSOCIATION UNDER THE "COLORADO COMMON INTEREST**
103 **OWNERSHIP ACT" MAY TAKE AGAINST A UNIT OWNER WITH**
104 **RESPECT TO THE COLLECTION OF DEBT OWED TO THE UNIT**
105 **OWNERS' ASSOCIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Section 1 of the bill requires the unit owners' association of a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

common interest community (HOA) to adopt, and comply with, a policy regarding the collection of delinquent assessments and other past-due amounts from unit owners. The HOA may not refer a unit owner's account to a collection agency or attorney without first giving the unit owner notice of the total amount due and how it was determined, offering the unit owner a one-time opportunity to enter into a 6-month payment plan, and listing the legal remedies, including foreclosure, that are available to the HOA.

Section 2 of the bill prohibits an HOA from foreclosing its lien for past-due assessments unless the total amount is at least equal to 6 months of regular assessments and unless the HOA's executive board has formally approved the foreclosure action on an individual basis.

Section 3 specifies the terms and conditions of the repayment plan that must be offered. The plan must permit the unit owner to pay off the deficiency in equal installments over a period of at least 6 months; however, the plan requires the unit owner to remain current on regular assessments as they come due during the period and allows the HOA to pursue collection if the unit owner fails to comply with the plan, has previously been subject to a payment plan, or is a bank that has acquired the unit as a result of default by a borrower. For purposes of section 3, "assessments" include fees, charges, late charges, attorney fees, fines, and interest on common expense assessments.

Section 4 of the bill applies its provisions to common interest communities created before July 1, 1992, the effective date of the "Colorado Common Interest Ownership Act", as well as to those created after that date.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 38-33.3-209.5, **add**
3 (5) as follows:

4 **38-33.3-209.5. Responsible governance policies - due process**
5 **for imposition of fines - procedure for collection of delinquent**
6 **accounts.** (5) NOTWITHSTANDING ANY PROVISION OF THE DECLARATION,
7 BYLAWS, ARTICLES, OR RULES AND REGULATIONS TO THE CONTRARY OR
8 THE ABSENCE OF A RELEVANT PROVISION IN THE DECLARATION, BYLAWS,
9 ARTICLES, OR RULES OR REGULATIONS, THE ASSOCIATION OR A HOLDER OR
10 ASSIGNEE OF THE ASSOCIATION'S DEBT MAY NOT USE A COLLECTION

1 AGENCY OR TAKE LEGAL ACTION TO COLLECT UNPAID ASSESSMENTS
2 UNLESS THE ASSOCIATION HAS ADOPTED, AND FOLLOWS, A WRITTEN
3 POLICY GOVERNING THE COLLECTION OF UNPAID ASSESSMENTS. THE
4 POLICY MUST, AT A MINIMUM, SPECIFY:

5 (a) THE DATE ON WHICH ASSESSMENTS MUST BE PAID TO THE
6 ASSOCIATION AND WHEN AN ASSESSMENT IS CONSIDERED PAST DUE AND
7 DELINQUENT;

8 (b) ANY LATE FEES AND INTEREST THE ASSOCIATION IS ENTITLED
9 TO IMPOSE ON A DELINQUENT UNIT OWNER'S ACCOUNT;

10 (c) ANY RETURNED-CHECK CHARGES THE ASSOCIATION IS
11 ENTITLED TO IMPOSE;

12 (d) THE CIRCUMSTANCES UNDER WHICH A UNIT OWNER IS
13 ENTITLED TO ENTER INTO A PAYMENT PLAN WITH THE ASSOCIATION
14 PURSUANT TO SECTION 38-33.3-316.3 AND THE MINIMUM TERMS OF THE
15 PAYMENT PLAN MANDATED BY THAT SECTION;

16 (e) THAT, BEFORE THE ASSOCIATION TURNS OVER A DELINQUENT
17 ACCOUNT OF A UNIT OWNER TO A COLLECTION AGENCY OR REFERS IT TO
18 AN ATTORNEY FOR LEGAL ACTION, THE ASSOCIATION MUST SEND THE UNIT
19 OWNER A NOTICE OF DELINQUENCY SPECIFYING:

20 (I) THE TOTAL AMOUNT DUE, WITH AN ACCOUNTING OF HOW THE
21 TOTAL WAS DETERMINED;

22 (II) WHETHER THE OPPORTUNITY TO ENTER INTO A PAYMENT PLAN
23 EXISTS PURSUANT TO SECTION 38-33.3-316.3 AND INSTRUCTIONS FOR
24 CONTACTING THE ASSOCIATION TO ENTER INTO SUCH A PAYMENT PLAN;

25 (III) THE NAME AND CONTACT INFORMATION FOR THE INDIVIDUAL
26 THE UNIT OWNER MAY CONTACT TO REQUEST A COPY OF THE UNIT
27 OWNER'S LEDGER IN ORDER TO VERIFY THE AMOUNT OF THE DEBT; AND

1 (IV) THAT ACTION IS REQUIRED TO CURE THE DELINQUENCY AND
2 THAT FAILURE TO DO SO WITHIN THIRTY DAYS MAY RESULT IN THE UNIT
3 OWNER'S DELINQUENT ACCOUNT BEING TURNED OVER TO A COLLECTION
4 AGENCY, A LAWSUIT BEING FILED AGAINST THE OWNER, THE FILING AND
5 FORECLOSURE OF A LIEN AGAINST THE UNIT OWNER'S PROPERTY, OR OTHER
6 REMEDIES AVAILABLE UNDER COLORADO LAW;

7 (f) THE METHOD BY WHICH PAYMENTS MAY BE APPLIED ON THE
8 DELINQUENT ACCOUNT OF A UNIT OWNER; AND

9 (g) THE LEGAL REMEDIES AVAILABLE TO THE ASSOCIATION TO
10 COLLECT ON A UNIT OWNER'S DELINQUENT ACCOUNT PURSUANT TO THE
11 GOVERNING DOCUMENTS OF THE ASSOCIATION AND COLORADO LAW.

12 **SECTION 2.** In Colorado Revised Statutes, 38-33.3-316, **amend**
13 (11) (a) and (11) (b) as follows:

14 **38-33.3-316. Lien for assessments.** (11) The association's lien
15 may be foreclosed by any of the following means:

16 (a) In a condominium or planned community, the association's lien
17 may be foreclosed in like manner as a mortgage on real estate; EXCEPT
18 THAT THE ASSOCIATION OR A HOLDER OR ASSIGNEE OF THE ASSOCIATION'S
19 LIEN MAY ONLY FORECLOSE ON THE LIEN IF:

20 (I) THE BALANCE OF THE ASSESSMENTS AND CHARGES SECURED BY
21 ITS LIEN, AS DEFINED IN SUBSECTION (2) OF THIS SECTION, EQUALS OR
22 EXCEEDS SIX MONTHS OF COMMON EXPENSE ASSESSMENTS BASED ON A
23 PERIODIC BUDGET ADOPTED BY THE ASSOCIATION; AND

24 (II) THE EXECUTIVE BOARD HAS FORMALLY RESOLVED, BY A
25 RECORDED VOTE, TO AUTHORIZE THE FILING OF A LEGAL ACTION AGAINST
26 THE SPECIFIC UNIT ON AN INDIVIDUAL BASIS. THE BOARD MAY NOT
27 DELEGATE ITS DUTY TO ACT UNDER THIS SUBPARAGRAPH (II) TO ANY

1 ATTORNEY, INSURER, MANAGER, OR OTHER PERSON, AND ANY LEGAL
2 ACTION FILED WITHOUT EVIDENCE OF THE RECORDED VOTE AUTHORIZING
3 THE ACTION MUST BE DISMISSED. NO ATTORNEY FEES, COURT COSTS, OR
4 OTHER CHARGES INCURRED BY THE ASSOCIATION IN CONNECTION WITH AN
5 ACTION THAT IS DISMISSED FOR THIS REASON MAY BE ASSESSED AGAINST
6 THE UNIT OWNER.

7 (b) In a cooperative whose unit owners' interests in the units are
8 real estate as determined in accordance with the provisions of section
9 38-33.3-105, the association's lien must be foreclosed in like manner as
10 a mortgage on real estate; EXCEPT THAT THE ASSOCIATION OR A HOLDER
11 OR ASSIGNEE OF THE ASSOCIATION'S LIEN MAY ONLY FORECLOSE ON THE
12 LIEN IF:

13 (I) THE BALANCE OF THE ASSESSMENTS AND CHARGES SECURED BY
14 ITS LIEN, AS DEFINED IN SUBSECTION (2) OF THIS SECTION, EQUALS OR
15 EXCEEDS SIX MONTHS OF COMMON EXPENSE ASSESSMENTS BASED ON A
16 PERIODIC BUDGET ADOPTED BY THE ASSOCIATION; AND

17 (II) THE EXECUTIVE BOARD HAS FORMALLY RESOLVED, BY A
18 RECORDED VOTE, TO AUTHORIZE THE FILING OF A LEGAL ACTION AGAINST
19 THE SPECIFIC UNIT ON AN INDIVIDUAL BASIS. THE BOARD MAY NOT
20 DELEGATE ITS DUTY TO ACT UNDER THIS SUBPARAGRAPH (II) TO ANY
21 ATTORNEY, INSURER, MANAGER, OR OTHER PERSON, AND ANY LEGAL
22 ACTION FILED WITHOUT EVIDENCE OF THE RECORDED VOTE AUTHORIZING
23 THE ACTION MUST BE DISMISSED. NO ATTORNEY FEES, COURT COSTS, OR
24 OTHER CHARGES INCURRED BY THE ASSOCIATION IN CONNECTION WITH AN
25 ACTION THAT IS DISMISSED FOR THIS REASON MAY BE ASSESSED AGAINST
26 THE UNIT OWNER.

27 **SECTION 3.** In Colorado Revised Statutes, **add** 38-33.3-316.3

1 as follows:

2 **38-33.3-316.3. Collections - limitations.** (1) IN COLLECTING
3 PAST-DUE ASSESSMENTS AND OTHER DELINQUENT PAYMENTS UNDER THIS
4 ARTICLE, AN ASSOCIATION SHALL:

5 (a) ADOPT AND COMPLY WITH A COLLECTIONS POLICY THAT MEETS
6 THE REQUIREMENTS OF SECTION 38-33.3-209.5 (5); AND

7 (b) MAKE A GOOD-FAITH EFFORT TO COORDINATE WITH THE UNIT
8 OWNER TO SET UP A PAYMENT PLAN THAT MEETS THE REQUIREMENTS OF
9 THIS SECTION; EXCEPT THAT:

10 (I) THIS SECTION DOES NOT APPLY IF THE UNIT OWNER DOES NOT
11 OCCUPY THE UNIT AND HAS ACQUIRED THE PROPERTY AS A RESULT OF:

12 (A) A DEFAULT OF A SECURITY INTEREST ENCUMBERING THE UNIT;

13 OR

14 (B) FORECLOSURE OF THE ASSOCIATION'S LIEN; AND

15 (II) THE ASSOCIATION IS NOT OBLIGATED TO NEGOTIATE A
16 PAYMENT PLAN WITH A UNIT OWNER WHO HAS PREVIOUSLY ENTERED INTO
17 A PAYMENT PLAN UNDER THIS SECTION.

18 (2) A PAYMENT PLAN NEGOTIATED BETWEEN THE ASSOCIATION
19 AND THE UNIT OWNER PURSUANT TO THIS SECTION MUST PERMIT THE UNIT
20 OWNER TO PAY OFF THE DEFICIENCY IN EQUAL INSTALLMENTS OVER A
21 PERIOD OF AT LEAST SIX MONTHS. NOTHING IN THIS SECTION PROHIBITS AN
22 ASSOCIATION FROM PURSUING LEGAL ACTION AGAINST A UNIT OWNER IF
23 THE UNIT OWNER FAILS TO COMPLY WITH THE TERMS OF HIS OR HER
24 PAYMENT PLAN. A UNIT OWNER'S FAILURE TO REMIT PAYMENT OF AN
25 AGREED-UPON INSTALLMENT, OR TO REMAIN CURRENT WITH REGULAR
26 ASSESSMENTS AS THEY COME DUE DURING THE SIX-MONTH PERIOD,
27 CONSTITUTES A FAILURE TO COMPLY WITH THE TERMS OF HIS OR HER

1 PAYMENT PLAN.

2 (3) FOR PURPOSES OF THIS SECTION, "ASSESSMENTS" INCLUDES
3 REGULAR AND SPECIAL ASSESSMENTS AND ANY ASSOCIATED FEES,
4 CHARGES, LATE CHARGES, ATTORNEY FEES, FINES, AND INTEREST
5 CHARGED PURSUANT TO SECTION 38-33.3-315 (2).

6 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-117, **amend**
7 (1) introductory portion; and **add** (1) (k.5) as follows:

8 **38-33.3-117. Applicability to preexisting common interest**
9 **communities.** (1) Except as provided in section 38-33.3-119, the
10 following sections ~~shall~~ apply to all common interest communities created
11 within this state before July 1, 1992, with respect to events and
12 circumstances occurring on or after July 1, 1992:

13 (k.5) 38-33.3-316.3; AND

14 **SECTION 5. Act subject to petition - effective date -**
15 **applicability.** (1) This act takes effect January 1, 2014; except that, if a
16 referendum petition is filed pursuant to section 1 (3) of article V of the
17 state constitution against this act or an item, section, or part of this act
18 within the ninety-day period after final adjournment of the general
19 assembly, then the act, item, section, or part will not take effect unless
20 approved by the people at the general election to be held in November
21 2014 and, in such case, will take effect on the date of the official
22 declaration of the vote thereon by the governor.

23 (2) This act applies to debt collection practices, payment plans,
24 and foreclosure proceedings commenced on or after the applicable
25 effective date of this act.