

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0396.01 Jennifer Berman x3286

HOUSE BILL 22-1137

HOUSE SPONSORSHIP

Ricks,

SENATE SPONSORSHIP

(None),

House Committees

Transportation & Local Government

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PRACTICES OF UNIT OWNERS' ASSOCIATIONS, AND, IN
102 CONNECTION THEREWITH, AUTHORIZING THE ENFORCEMENT OF
103 CERTAIN MATTERS REGARDING UNIT OWNERS' ASSOCIATIONS IN
104 SMALL CLAIMS COURT AND LIMITING THE CONDUCT OF UNIT
105 OWNERS' ASSOCIATIONS IN COLLECTING UNPAID ASSESSMENTS,
106 FEES, AND FINES.

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://leg.colorado.gov>.)

Section 1 of the bill authorizes a party in a matter concerning

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

rights and responsibilities arising under the declaration, bylaws, covenants, or other governing documents of a unit owners' association (HOA) to enforce those rights or responsibilities in small claims court if the amount at issue does not exceed \$7,500, exclusive of interest and costs. The party may also seek declaratory relief in small claims court. **Section 2** specifies that the authority to enforce rights and responsibilities in small claims court applies to an HOA's collection of fines from a unit owner if the amount of fines, exclusive of interest and costs, does not exceed \$7,500.

Section 2 also requires an HOA that voluntarily conducts a reserve study to also conduct a reconciliation of all of its reserve accounts at the time of conducting the reserve study.

With regard to a unit owner's delinquency in paying HOA assessments, **section 2** also:

- Requires an HOA to alert the unit owner regarding the delinquency by, in addition to sending a notice of delinquency to the unit owner as required by current law, attempting to contact the unit owner by at least 2 other methods of communication, including first-class or certified mail, an e-mail, a telephone call or voice mail message, or an in-person contact. The HOA must keep records of its attempts to contact the unit owner regarding the delinquency.
- Prohibits an HOA, or a property management company acting on behalf of an HOA, from referring the delinquent account to a collection agency or attorney unless a majority of the HOA's board of directors vote to refer the matter on the record at a public hearing;
- Prohibits an HOA from imposing late fees, fines, and interest on a per-diem basis in an amount that exceeds the lesser of \$50 per day or \$500 total;
- Prohibits an HOA from assessing late fees and fines in an amount or manner that renders the HOA dependent on the late fees or fines for the purpose of generating revenue for the HOA's general expenses;
- Prohibits an HOA from charging a rate of interest on unpaid assessments, fees, or fines in an amount greater than 8% per year;
- Prohibits an HOA from assessing a fee or other charge for providing the unit owner a statement of the total amount that the unit owner owes the HOA;
- Requires an HOA to adopt a policy to provide the unit owner with contact information for one or more foreclosure counseling services available in the county in which the unit owner's common interest community is located; and

- Before an HOA may initiate a foreclosure action against a unit owner, requires that the HOA offer the unit owner a repayment plan to pay the debt in monthly installments, and the unit owner either declines the offer or, after accepting the offer, fails to make at least 3 monthly payments.

Section 3 limits the interest rate that an HOA may apply to a unit owner's past due assessment to an amount not to exceed 8% per year.

Section 4 limits the amount that an HOA is entitled to recover in any action or suit that the HOA brings against a unit owner to an amount equal to 3 times the amount of unpaid regular and special assessments plus interest. Similarly, **section 5** limits the maximum amount of assessments and associated fees, late charges, attorney fees, fines, and interest that an HOA may recover from the unit owner to 3 times the amount of all unpaid regular and special assessments plus interest.

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

2 **SECTION 1.** In Colorado Revised Statutes, 13-6-403, **amend** (1),
3 (2) introductory portion, and (2)(h) as follows:

4 **13-6-403. Jurisdiction of small claims court - limitations.**

5 (1) (a) ~~On and after January 1, 1996,~~ The small claims court ~~shall have~~
6 HAS concurrent original jurisdiction with the county and district courts in
7 all civil actions in which the debt, damage, or value of the personal
8 property claimed by either the plaintiff or the defendant, exclusive of
9 interest and cost, does not exceed seven thousand five hundred dollars,
10 including such civil penalties as may be provided by law. By way of
11 further example, and not limitation, the small claims court ~~shall have~~ HAS
12 jurisdiction to hear and determine actions in tort and assess damages
13 ~~therein~~ IN TORT ACTIONS not to exceed seven thousand five hundred
14 dollars.

15 (b) The small claims court division ~~shall also have~~ ALSO HAS
16 concurrent original jurisdiction with the county and district courts in
17 actions where a party seeks:

1 (I) TO ENFORCE RIGHTS AND RESPONSIBILITIES ARISING UNDER THE
2 DECLARATION, BYLAWS, COVENANTS, OR OTHER GOVERNING DOCUMENTS
3 OF A UNIT OWNERS' ASSOCIATION, AS DEFINED IN SECTION 38-33.3-103 (3),
4 IN RELATION TO DISPUTES FOR WHICH THE AMOUNT AT ISSUE DOES NOT
5 EXCEED SEVEN THOUSAND FIVE HUNDRED DOLLARS, EXCLUSIVE OF
6 INTEREST AND COSTS;

7 (II) To enforce a restrictive covenant on residential property and
8 the amount required to comply with the covenant does not exceed seven
9 thousand five hundred dollars, exclusive of interest and costs; ~~in actions~~

10 (III) ~~Where a party seeks~~ Replevin if the value of the property
11 sought does not exceed seven thousand five hundred dollars; and ~~in~~
12 ~~actions~~

13 (IV) ~~Where a party seeks~~ To enforce a contract by specific
14 performance or to disaffirm, avoid, or rescind a contract and the amount
15 at issue does not exceed seven thousand five hundred dollars.

16 (2) The small claims court ~~shall have no~~ HAS ONLY THAT
17 jurisdiction ~~except that~~ specifically conferred upon it by law, AS
18 PROVIDED IN SUBSECTION (1) OF THIS SECTION. In particular, it ~~shall have~~
19 ~~no~~ DOES NOT HAVE jurisdiction over the following matters:

20 (h) Actions involving injunctive relief, except as required to:

21 (I) ENFORCE RIGHTS OR RESPONSIBILITIES ARISING UNDER THE
22 DECLARATION, BYLAWS, COVENANTS, OR OTHER GOVERNING DOCUMENTS
23 OF A UNIT OWNERS' ASSOCIATION, AS DEFINED IN SECTION 38-33.3-103 (3),
24 AND INCLUDING ACTIONS SEEKING DECLARATORY RELIEF;

25 (H) (II) Enforce restrictive covenants on residential property;

26 (HH) (III) Enforce the provisions of section 6-1-702.5; ~~C.R.S.~~;

27 (HHH) (IV) Accomplish replevin; and

1 ~~(IV)~~(V) Enter judgments in actions where a party seeks to enforce
2 a contract by specific performance or to disaffirm, avoid, or rescind a
3 contract;

4 **SECTION 2.** In Colorado Revised Statutes, 38-33.3-209.5,
5 **amend** (1)(b)(IX), (5)(a) introductory portion, (5)(a)(VI), and (5)(a)(VII);
6 and **add** (1.7), (5)(a)(VIII), (6), and (7) as follows:

7 **38-33.3-209.5. Responsible governance policies - due process**
8 **for imposition of fines - procedure for collection of delinquent**
9 **accounts - enforcement through small claims court - definition.**

10 (1) To promote responsible governance, associations shall:

11 (b) Adopt policies, procedures, and rules and regulations
12 concerning:

13 (IX) When the association has a reserve study prepared for the
14 ~~portions of the community maintained, repaired, replaced, and improved~~
15 ~~by the association;~~ COMMON ELEMENTS, WHICH MAY BE CONDUCTED
16 INTERNALLY:

17 (A) Whether there is a funding plan for any work recommended
18 by the reserve study and, if so, the projected sources of funding for the
19 work; and

20 (B) Whether the reserve study is based on a physical analysis and
21 financial analysis; ~~For the purposes of this subparagraph (IX), an~~
22 ~~internally conducted reserve study shall be sufficient.~~ AND

23 (C) AT THE TIME OF PERFORMING THE RESERVE STUDY, THE NEED
24 TO PERFORM A RECONCILIATION OF ALL RESERVE ACCOUNTS IN WHICH ALL
25 CONTRIBUTIONS TO AND SPENDING FROM A RESERVE ACCOUNT ARE
26 ACCOUNTED FOR AND REPORTED ON THE ASSOCIATION'S WEBSITE OR
27 THROUGH OTHER COMMUNICATIONS MADE AVAILABLE TO ALL UNIT

1 OWNERS.

2 (1.7) WITH REGARD TO A UNIT OWNER'S DELINQUENCY IN PAYING
3 ASSESSMENTS, AN ASSOCIATION:

4 (a) SHALL:

5 (I) FIRST ATTEMPT TO CONTACT THE UNIT OWNER TO ALERT THE
6 UNIT OWNER OF THE DELINQUENCY BEFORE TAKING ACTION IN RELATION
7 TO THE DELINQUENCY PURSUANT TO SUBSECTION (1.7)(a)(II) OF THIS
8 SECTION AND SHALL MAINTAIN A RECORD OF ANY CONTACT ATTEMPTED,
9 INCLUDING INFORMATION REGARDING THE TYPE OF COMMUNICATION USED
10 IN ATTEMPTING TO CONTACT THE UNIT OWNER AND THE DATE AND TIME
11 THAT THE ATTEMPTED CONTACT WAS MADE. IN ATTEMPTING TO CONTACT
12 THE UNIT OWNER, AN ASSOCIATION MUST ATTEMPT AT LEAST TWO OF THE
13 FOLLOWING MEANS OF COMMUNICATION IN ADDITION TO THE NOTICE OF
14 DELINQUENCY REQUIRED TO BE SENT PURSUANT TO SUBSECTION (5)(a)(V)
15 OF THIS SECTION:

16 (A) FIRST-CLASS OR CERTIFIED MAIL;

17 (B) E-MAIL;

18 (C) TELEPHONE CALL OR VOICE MAIL MESSAGE; OR

19 (D) IN-PERSON CONTACT; AND

20 (II) REFER A DELINQUENT ACCOUNT TO A COLLECTION AGENCY OR
21 ATTORNEY ONLY IF A MAJORITY OF THE ASSOCIATION'S BOARD OF
22 DIRECTORS VOTES TO REFER THE MATTER IN A RECORDED VOTE AT A
23 PUBLIC MEETING. A PROPERTY MANAGEMENT COMPANY ACTING ON
24 BEHALF OF THE ASSOCIATION SHALL NOT REFER A DELINQUENT ACCOUNT
25 TO A COLLECTION AGENCY OR AN ATTORNEY UNLESS A MAJORITY OF THE
26 ASSOCIATION'S BOARD OF DIRECTORS VOTES TO REFER THE MATTER IN A
27 RECORDED VOTE AT A PUBLIC MEETING.

1 (b) SHALL NOT:

2 (I) IMPOSE LATE FEES, FINES, AND INTEREST ON A PER-DIEM BASIS
3 IN AN AMOUNT THAT EXCEEDS THE LESSER OF FIFTY DOLLARS PER DAY OR
4 FIVE HUNDRED DOLLARS TOTAL;

5 (II) ASSESS LATE FEES AND FINES IN AN AMOUNT OR MANNER THAT
6 RENDERS THE ASSOCIATION DEPENDENT ON THE LATE FEES OR FINES FOR
7 THE PURPOSE OF GENERATING REVENUE FOR THE ASSOCIATION'S GENERAL
8 EXPENSES;

9 (III) CHARGE A RATE OF INTEREST ON UNPAID ASSESSMENTS, FEES,
10 OR FINES IN AN AMOUNT GREATER THAN EIGHT PERCENT PER YEAR; AND

11 (IV) ASSESS A FEE OR OTHER CHARGE FOR PROVIDING THE UNIT
12 OWNER A STATEMENT OF THE TOTAL AMOUNT THAT THE UNIT OWNER
13 OWES.

14 (5) (a) Notwithstanding any provision of the declaration, bylaws,
15 articles OF INCORPORATION, or rules ~~and~~ OR regulations to the contrary or
16 the absence of a relevant provision in the declaration, bylaws, articles OF
17 INCORPORATION, or rules or regulations, the association or a holder or
18 assignee of the association's debt, whether the holder or assignee of the
19 association's debt is an entity or a natural person, may not use a collection
20 agency or take legal action to collect unpaid assessments unless the
21 association or a holder or assignee of the association's debt has adopted,
22 and follows, a written policy governing the collection of unpaid
23 assessments. The policy must, at a minimum, specify:

24 (VI) The method by which payments may be applied on the
25 delinquent account of a unit owner; ~~and~~

26 (VII) The legal remedies available to the entity to collect on a unit
27 owner's delinquent account pursuant to the governing documents of the

1 entity and Colorado law; AND

2 (VIII) THAT THE ASSOCIATION OR HOLDER OR ASSIGNEE OF THE
3 ASSOCIATION'S DEBT SHARE WITH A UNIT OWNER WITH A DELINQUENT
4 ACCOUNT THE NAMES, ADDRESSES, AND CONTACT INFORMATION FOR ONE
5 OR MORE FORECLOSURE COUNSELING SERVICES AVAILABLE IN THE COUNTY
6 IN WHICH THE UNIT OWNER'S COMMON INTEREST COMMUNITY IS LOCATED.
7 THE WRITTEN POLICY MUST ALSO REQUIRE THE ASSOCIATION TO NOTIFY
8 THE UNIT OWNER THAT, UPON REQUEST, THE ASSOCIATION CAN PROVIDE
9 THE UNIT OWNER WITH CONTACT INFORMATION FOR ANY AVAILABLE
10 FINANCIAL COUNSELING SERVICES, LEGAL AID SERVICES, TRANSLATION
11 SERVICES, MENTAL AND BEHAVIORAL HEALTH SERVICES, SERVICES FOR
12 SENIOR POPULATIONS, AND VETERANS' SERVICES.

13 (6) (a) A UNIT OWNERS' ASSOCIATION SHALL NOT COMMENCE A
14 LEGAL ACTION TO INITIATE A FORECLOSURE PROCEEDING BASED ON A UNIT
15 OWNER'S DELINQUENCY IN PAYING ASSESSMENTS UNLESS:

16 (I) THE ASSOCIATION HAS COMPLIED WITH EACH OF THE
17 REQUIREMENTS IN THIS SECTION RELATED TO A UNIT OWNER'S
18 DELINQUENCY IN PAYING ASSESSMENTS;

19 (II) THE ASSOCIATION HAS PROVIDED THE UNIT OWNER WITH A
20 WRITTEN OFFER TO ENTER INTO A REPAYMENT PLAN THAT AUTHORIZES
21 THE UNIT OWNER TO REPAY THE DEBT IN MONTHLY INSTALLMENTS, EACH
22 OF WHICH CANNOT EXCEED TEN PERCENT OF THE UNIT OWNER'S MONTHLY
23 UNIT ASSOCIATION FEES; AND

24 (III) WITHIN THIRTY DAYS AFTER THE ASSOCIATION HAS PROVIDED
25 THE OWNER WITH A WRITTEN OFFER TO ENTER INTO A REPAYMENT PLAN,
26 THE UNIT OWNER HAS EITHER:

27 (A) DECLINED THE REPAYMENT PLAN; OR

1 (B) AFTER ACCEPTING THE REPAYMENT PLAN, FAILED TO PAY AT
2 LEAST THREE OF THE MONTHLY INSTALLMENTS WITHIN FIFTEEN DAYS
3 AFTER THE MONTHLY INSTALLMENTS WERE DUE.

4 (b) A UNIT OWNER WHO HAS ENTERED INTO A REPAYMENT PLAN
5 PURSUANT TO SUBSECTION (6)(a) OF THIS SECTION MAY ELECT TO PAY THE
6 REMAINING BALANCE OWED UNDER THE REPAYMENT PLAN AT ANY TIME
7 DURING THE DURATION OF THE REPAYMENT PLAN.

8 (7) (a) A PARTY SEEKING TO ENFORCE RIGHTS AND
9 RESPONSIBILITIES ARISING UNDER THE DECLARATION, BYLAWS,
10 COVENANTS, OR OTHER GOVERNING DOCUMENTS OF AN ASSOCIATION IN
11 RELATION TO DISPUTES FOR WHICH THE AMOUNT AT ISSUE DOES NOT
12 EXCEED SEVEN THOUSAND FIVE HUNDRED DOLLARS, EXCLUSIVE OF
13 INTEREST AND COSTS, MAY FILE A CLAIM IN SMALL CLAIMS COURT
14 PURSUANT TO SECTION 13-6-403 (1)(b)(I).

15 (b) IN ORDER TO SEPARATE THE COLLECTION OF FINES FROM THE
16 FORECLOSURE PROCESS, AN ASSOCIATION OR HOLDER OR ASSIGNEE OF THE
17 ASSOCIATION'S DEBT SHALL SEEK TO ENFORCE ITS RIGHTS AND
18 RESPONSIBILITIES AGAINST A UNIT OWNER REGARDING COLLECTION OF
19 FINES BY FILING A CLAIM IN SMALL CLAIMS COURT PURSUANT TO SECTION
20 13-6-403 IF THE FINES, EXCLUSIVE OF INTEREST AND COSTS, DO NOT
21 EXCEED SEVEN THOUSAND FIVE HUNDRED DOLLARS.

22 **SECTION 3.** In Colorado Revised Statutes, 38-33.3-315, **amend**
23 (2) as follows:

24 **38-33.3-315. Assessments for common expenses.** (2) Except for
25 assessments under subsections (3) and (4) of this section and section
26 38-33.3-207 (4)(a)(IV), all common expenses shall be assessed against all
27 the units in accordance with the allocations set forth in the declaration

1 pursuant to section 38-33.3-207 (1) and (2). Any past-due common
2 expense assessment or installment ~~thereof shall bear~~ OF A COMMON
3 EXPENSE ASSESSMENT BEARS interest at the rate established by the
4 association ~~not exceeding twenty-one~~ IN AN AMOUNT NOT TO EXCEED
5 EIGHT percent per year.

6 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-316, **amend**
7 (7) as follows:

8 **38-33.3-316. Lien for assessments - limitations.** (7) The
9 association ~~shall be~~ IS entitled to costs and reasonable attorney fees
10 ~~incurred by~~ THAT the association ~~in a judgment or decree~~ INCURS in any
11 action or suit FOR A JUDGMENT OR DECREE brought by the association
12 under this section; EXCEPT THAT THE TOTAL AMOUNT THAT THE
13 ASSOCIATION IS ENTITLED TO RECOVER, INCLUDING COSTS AND ATTORNEY
14 FEES, CANNOT EXCEED THREE TIMES THE AMOUNT OF ALL UNPAID
15 REGULAR AND SPECIAL ASSESSMENTS AT ISSUE PLUS INTEREST.

16 **SECTION 5.** In Colorado Revised Statutes, 38-33.3-316.3, **add**
17 (2.5) as follows:

18 **38-33.3-316.3. Collections - limitations.** (2.5) THE MAXIMUM
19 AMOUNT OF ASSESSMENTS THAT THE ASSOCIATION OR A HOLDER OR
20 ASSIGNEE OF THE ASSOCIATION'S DEBT MAY RECOVER FROM A UNIT OWNER
21 CANNOT EXCEED THREE TIMES THE AMOUNT OF ALL UNPAID REGULAR AND
22 SPECIAL ASSESSMENTS PLUS INTEREST.

23 **SECTION 6. Act subject to petition - effective date -**
24 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
25 the expiration of the ninety-day period after final adjournment of the
26 general assembly; except that, if a referendum petition is filed pursuant
27 to section 1 (3) of article V of the state constitution against this act or an

1 item, section, or part of this act within such period, then the act, item,
2 section, or part will not take effect unless approved by the people at the
3 general election to be held in November 2022 and, in such case, will take
4 effect on the date of the official declaration of the vote thereon by the
5 governor.

6 (2) This act applies to conduct occurring on or after the applicable
7 effective date of this act.