



Written/Remote Testimony for HB24-1233 in the Senate Local Government and Housing Committee (sign-up is broken) Andrew Mowery to: tony.exum.senate, julie.gonzales.senate, sonya.jaquez.lewis.senate, byron.pelton.senate, rod.pelton.senate, janicerichsd7, faith.winter.senate, committees.lcs.ga, adam.alemzada 04/03/2024 10:53 PM

Cc: "Naquetta Ricks", "Representative Titone", "Rep-Elect Jennifer Parenti", meg.froelich.house, jennifer.bacon.house  
History: This message has been replied to.

**To Adam Alamzada:**

I am not able to sign up for Written or Remote Testimony for the upcoming hearing on HB24-1233 via the normal [website page](#). There is no reference by bill, hearing or sponsor for tomorrow's meeting, and the Bill's page still shows this on the agenda for tomorrow. It is difficult to tell if it has been rescheduled or if this is a technical error.

**To the Esteemed Members of the Senate Local Government and Housing Committee:**

Thank you for the opportunity to speak on HB24-1233. I am still in an *oppose position* on this bill *unless there will be an amendment* to address the removal of the requirement of HOA Boards and CAMs to physically post a notice on the door of a homeowner who is delinquent on assessments. *I could support the bill if amended as follows:*

A. Amend HB24-1233 to keep door-posting as a method in Section 209.5 Paragraph (1.7)(a)(I) of the Reingrossed Bill in Section 1, Lines 17-18 as follows:

ADD the following in places of the strike-out language:

"If all of the first notice attempts fail to reach the delinquent unit owner via:

(i) email;

(ii) text; and

(iii) USPS Certified Mail, Return Receipt Requested

*and* the Association's Board of Directors has voted unanimously that no further attempts by these methods is likely to reach the unit owner, then the Association shall post a notice on the door of the unit owner and shall use a professional process server to post the notice. The notice must not communicate to anyone other than the unit owner that the notice is in regards to collections, delinquencies, or any form of debt collection. The process server may be hired to make positive contact with the unit owner, or they may be hired to physically post the notice to the door of the unit owner, when practicable and appropriate. The Association must use good faith discretion to avoid even creating the appearance of inviting shame or defamation upon the unit owner, yet must also use the same discretion to ensure that every reasonable effort to have proof of notice is exhausted. The process server option is strictly a method of last resort when the Association Board of Directors votes unanimously that the other three methods are fully exhausted, and shall not be used as a method of first notice under any circumstances. The cost of the professional process server is to be added without any administrative costs, markups, or anything other than the exact paid amount for the service is to be added to the unit owner's accounting ledger."

B. ADD to SECTION 1. In Colorado Revised Statutes, 38-33.3-123, add (3) as follows:

**38-33.3-123. Enforcement - limitation.** (3) NOTWITHSTANDING ANY LAW TO THE CONTRARY, AS A CONDITION PRECEDENT TO RECOVERING MONEY OR SUMS DUE TO THE ASSOCIATION, COLLECTION COSTS, OR REASONABLE ATTORNEY FEES OR COSTS PURSUANT TO THIS SECTION, THE ASSOCIATION SHALL STRICTLY COMPLY WITH THIS SECTION AND ANY APPLICABLE PROVISIONS OF THIS TITLE 38 OR OTHER APPLICABLE LAW, THE DECLARATION, BYLAWS, ARTICLES, AND RULES AND REGULATIONS."

C. In SECTION **38-33.3-316. Lien for assessments.**

- Re Enumerate Paragraph (1)(a) to (1)(a)(I);
- ADD to Paragraph (1)(a) Paragraph (II) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "ASSESSMENT" MEANS A PAYMENT FOR COMMON EXPENSE OBLIGATIONS OF UNIT OWNERS BASED ON A PERIODIC BUDGET ADOPTED BY THE ASSOCIATION UNDER SECTION 38-33.3-315 (1), OR A PAYMENT FOR LIMITED COMMON ELEMENTS OF UNIT OWNERS, AND SPECIFICALLY EXCLUDES FINES, FEES, AND ANY COSTS ASSOCIATED WITH COLLECTING DELINQUENT ASSESSMENTS, DISPUTE RESOLUTION, OR ENFORCEMENT OF COVENANTS

As The Colorado Poverty Law Project has testified, posting of notices on doors *has been proven since the passage of HB22-1137 to be effective*. And, HOA Industry Lobbyists have also testified that HB22-1137 *"is working"* to stop predatory collections and foreclosures.

The HOA Industry, in support of removing door posting, has only given three primary reasons to support eliminating a tool that is actually working:

1. Many homeowners would see increased assessments
2. Door posting shames the homeowner
3. Door posting is dangerous to Board Members or Community Area Managers (CAMs)

It is simply *a logical fallacy that homeowner assessments are affected by door posting*. The HOA Industry claims that there are so few foreclosures to begin with that there is little need for the protections. Logic dictates that if so few HOAs use foreclosure, it is not possible that inclusion of door-posting as a notice requirement somehow increases assessments for all HOAs in Colorado, let alone the few that they say are involved in foreclosures.

By making door posting a last resort option, and passing through the cost to the delinquent homeowner (same as the USPS Certified Mail cost is being passed through in this very same bill) addresses fully the issue of increased assessments.

The issue of shaming the homeowner and the physical danger of the notice method is addressed by making this type of notice only activated upon both the exhaustion of the first three notice options and a unanimous vote of the HOA Board. The Board can use discretion to either continue trying the first three methods, or to move onto this method of last resort. By hiring a professional process server, the safety of the Board Members and Managers is assured. Professional process servers can be law enforcement, and all have training and experience (particularly with de-escalation techniques) to avoid posting on a door escalating into a confrontation or violence. The notice itself should be designed to avoid shaming the homeowner. The good faith of the Board and/or Managers and a standard of reasonableness fully addresses the concern.

The reason for amending Items B & C are to fully address the ongoing concern with attempts to circumnavigate the protections of HB22-1137 by some Colorado HOA Attorneys who have an interest in promote and engage in the practice of using "document revisions" to insert new clauses named "personal assessments", "supplemental assessments", "default assessments" or similar to effectively rename almost any "costs, expenditures, or charges" INTO assessments for the purpose of collections via foreclosure. By raising the standard from "substantial compliance" to "strict compliance", and by improving the definition of "assessments", those bad faith actors lose the incentive to attempt such circumventions.

Their advocacy is brazen: [NEED MORE MONEY FOR YOUR ASSOCIATION? HERE'S HOW TO GET IT!](#)

While advocates disagree with the frequency of foreclosures from 2018-2022 by a factor of 10 (2400 vs. 250) as documented by ProPublica, we agree that HB22-1137 was effective in reducing these numbers significantly (by 83%, according to ProPublica, after the first 6 months after HB22-1137 became effective law). Yet, we know that some of the very same attorneys at the top of ProPublica's list have been active in 2023-24 using these same methods to assign legal fees and other costs using these loopholes.

It is these same "bad apples" that are most likely to take advantage of the removal of door-posting, and who are in fact advocates of the removal of this element. [One of these attorneys admitted in a recording he himself made that his own brother was in the business of auctioning off foreclosed HOA homes](#). We must not further enable such predators by removing this language.

## HB24-1233 VOTING HISTORY

This bill barely made it out of The House Transportation, Housing, and Local Gov't Committee with an initial 5-5 vote. The Committee waited for 20 minutes for Rep. Boesnecker to be tracked down in a different committee meeting, and his vote was only secured by removal of yet another element we lobbied against (\$25 minimum payment fees).

The full House only passed the bill on a 36-25 vote. There are many members with concerns about this bill. These are some noteworthy votes:

- The *most experienced HOA Legislation Sponsors* (Rep. Titone, Rep. Ricks, Rep. Bacon, Rep. Parenti) all voted NO on the Second Reading
- Rep. Froelich who initially voted YES in the Committee *changed her vote* to NO on the floor for the Second Reading

I think the members of this committee should reach out to these Representatives to learn more about why you should either consider these amendments, or you should vote with them to oppose this bill.

If we cannot improve the bill to address passing through costs without adding excessive administrative fees (or profits) to the collection process, then the bill should be postponed indefinitely. The section on passing through costs could be added to HB24-1158 or HB24-1337 which are both under consideration in the House at this time.

Please vote to add the above amendments to the bill if this bill is to move forward, or vote NO. We don't need even one more Colorado HOA homeowners to lose their home to one of these predators. Let HB22-1137 keep working as even the industry admits it is!

Thank you for your time and consideration!

Sincerely,

Andrew Mowery  
Colorado HOA Homeowner Advocates  
970-310-5296