

HB22-1137

Homeowners' Association Board Accountability & Transparency

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.

Sponsored by: Representative Naquetta Ricks, Representative Mary Bradfield, and Senator Julie Gonzales

Summary

Currently, over 40% of Coloradans live under some form of Homeowners Association (HOA), which amounts to roughly 2.3 million people throughout the state. Many individuals living in HOA communities have shared their dissatisfaction with outsized legal costs of dispute management, as well as frustrations with insufficient communication when a fee, fine, or assessment is delinquent. Current law encourages HOAs to use expensive procedures, because their right to recover is ensured by a superior lien in the homeowner's property. This creates an improper incentive structure that can be leveraged against homeowners in harmful ways.

HB22-1137 seeks to address these issues by keeping the recoverable costs of resolving disputes between HOAs and homeowners in proportion to the underlying dispute; promoting use of the less-expensive small claims court process for resolving disputes relating to HOAs; and requiring HOAs to use reasonable efforts to contact homeowners before the costs of the dispute begin to spiral out of control.

What specific changes does HB22-1137 make?

1. Limit Fines and Fees that can be Recovered from Homeowners

What is the current law?	What does HB22-1137 do?	What does this change do?
<p>HOAs are allowed to assess late fees and interest to recover the cost of unpaid money and provide an incentive to address the issue promptly. But in some instances, they do not have the intended effect; instead, late fees and charges accrue far out of proportion to the underlying offense.</p>	<p>HB22-1137 limits the late fees and fines an HOA may assess to the lesser of \$50 per day or \$500 in total. This limit mirrors a similar limit that applies to HOAs that do not comply with requests to provide documents to homeowners. It also reduces the rate of interest an HOA may charge on outstanding balances to 8% per year, the same rate that applies to consumer credit transactions.</p>	<p>These limits on late fees and interest ensure that HOAs are fairly paid when assessments and other amounts to which they are duly entitled are not paid on time. It also places fair limits on such fees and interest—including the same limits that already apply to HOAs when they do not comply with their own obligations.</p>
<p>HOAs are allowed to recover attorney’s fees and costs when they initiate litigation against a homeowner. These fees and costs often far exceed the amounts in dispute. For example, a homeowner who owed less than \$200 in unpaid assessments may be required to pay \$3,000 to settle the entire matter after fees and costs are included.</p>	<p>HB22-1137 limits the amount of fees and costs an HOA may recover from a homeowner to a total sum that is no more than three times the amount of all unpaid regular and special assessments plus interest.</p>	<p>Limiting the amount an HOA can recover in fees and costs expended in pursuit of the unpaid assessment encourages the HOA to be efficient in how it pursues recovery. This will prompt HOAs to use extra efforts to contact homeowners, or to use less costly dispute resolution methods (such as small claims court).</p>

2. Expand Jurisdiction of Small Claims Court

What is the current law?	What does HB22-1137 do?	What does this change do?
<p>The small claims court is a court of limited jurisdiction. It can hear only certain kinds of</p>	<p>HB22-1137 allows the small claims court to hear any matter rising under the</p>	<p>Small claims court is designed to be faster, more efficient, and less expensive than other</p>

<p>claims, like claims to recover amounts of money lower than \$7,500. The small claims court cannot consider other kinds of cases, such as most claims to seek injunctive relief (where the Court orders a party to do or not do something) or declaratory relief (where the Court states what a party's rights or duties are). There are already exceptions to this rule; for example, small claims courts can hear claims to enforce restrictive covenants on residential property.</p>	<p>documents governing an HOA. This allows homeowners and HOAs to take almost any dispute relating to HOAs to small claims court.</p>	<p>courts. Allowing small claims courts to hear HOA-related disputes will save time and money for all involved.</p> <p>In addition, by diverting cases that would otherwise be heard in less-efficient and more-costly county and district courts, expanding the scope of the small claims court may ultimately conserve judicial resources on the whole.</p>
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3. Require Reasonable Efforts by HOAs to Contact Owners Before Escalating Costs

What is the current law?	What does HB22-1137 do?	What does this change do?
<p>HOAs are required to adopt policies stating certain steps they must take before initiating litigation. Among other things, HOAs must send a homeowner a certified letter advising them of the dispute. No other efforts to contact homeowners are required; HOAs can proceed with filing a lawsuit even when they know the certified letter was never received; as long as the letter was <i>sent</i>, that is all that matters.</p>	<p>HB22-1137 requires HOAs to make other reasonable efforts to reach homeowners before initiating expensive legal action. This includes attempting to contact the homeowner through at least two other means, such as email or telephone. In addition, a vote of approval from the HOA board is required before referring a delinquent account to an attorney.</p>	<p>Many homeowners may not be aware that there is a dispute until after an attorney has racked up thousands of dollars in legal fees. Issues that would otherwise rise into the thousands of dollars after attorneys get involved can often be resolved with a simple phone call. These changes encourage HOAs to make reasonable efforts to contact their neighbors and address the issue before legal costs begin to escalate the issue out of control.</p>

Amendments to be introduced in committee, 3/9/22

Based on continued stakeholder engagement and feedback, the following amendments will be introduced in committee.

Number	Context	What does L.001 do?
L.001	Continued stakeholder engagement with homeowners, homeowner advocates, property management companies, and legal experts.	<ol style="list-style-type: none">1. Allows a unit owner to identify designated contact.2. Removes discussion of reserve studies from the bill.3. Separates first class mail from certified mail, and requires that for certified mail, the HOA have proof of receipt4. Adds text message as a method for an HOA to issue notice of delinquency.5. Clarifies the cap on per-diem fees and fines, and removes interest from the \$50/ day or \$500 limitation.6. Requires HOA boards to go into executive session to discuss and vote on disciplinary hearings, and allows a unit owner to request and receive the results of any vote taken concerning the unit owner.7. HOAs must comply with notice requirements outlined in Section 38-33.3-209.5 as a prerequisite to recovering attorney fees or requiring homeowners to pay attorney fees.8. Extend unit owners' payment plan period from six to eighteen months.9. In addition to limiting the amount of assessments an association may recover to 3 times the amount of regular and special assessments plus interest, this amendment also limits fines and fees to 3 times this amount.10. Limits the amount of attorney fees that can be enforced as assessments.
L.002	After continued engagement with property management companies, we understand the importance of separating	Authorizes unpaid assessments to be enforced through foreclosure, but late fees and fines to be enforceable in small claims court.

	processes for fines and fees from those for assessments.	
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Media Coverage:

60 Green Valley Ranch homes facing possible foreclosure by HOAs and metro district

Vulnerable senior loses home after condo association forces sale to recover monthly dues

Coloradan Could Lose Home in HOA Fight: 'Read The Fine Print'

After 8 years homebound with severe depression, 70-year-old Loveland woman in danger of losing home due to unpaid HOA fees

Contact:

Morgan Anker, Rep. Ricks' Chief of Staff, aide.hd40@gmail.com

Supporters

The Colorado HOA Homeowners Advocates
Pikes Peak Area Agency on Aging

AARP

Colorado Center for Aging

Colorado Association of Realtors

The Colorado Senior League

Colorado Poverty Law Project

Greater Metro Denver Ministerial Alliance

Colorado Eviction Defense Project

National Association of Real Estate Brokers (NAREB) - CO Chapter

Kazazian & Associates, LLC

https://www.csindy.com/news/vulnerable-senior-loses-home-after-condo-association-forces-sale-to-recover-monthly-dues/article_aec6fb6e-937b-11ec-9af9-e33185e64977.html

FEATURED

LOCKED OUT

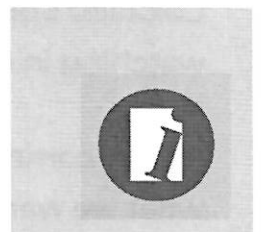
Vulnerable senior loses home after condo association forces sale to recover monthly dues

Pam Zubeck

Feb 23, 2022



Dustin Glatz with assets from Shutterstock.com



Ranae Lichtenberger can't read or write English. She's legally blind because of cataracts, and she's distrustful of just about everybody due to mental stressors from her blindness and living alone.

But none of that figured into the equation as the Ravencrest Condominiums Association at her town home complex forced the sale of the 65-year-old military widow's home. The sheriff's sale then triggered her eviction from the home for which she'd paid cash in 2010, money hard-earned one haircut at a time when she worked as a hair stylist at a variety of military bases across the country.

When the association first pursued her in court for back condo dues, it sought \$2,463. But by the time the association piled on attorney fees, late charges, interest and court costs during two years' worth of litigation, the amount due when the house sold last summer came to nearly \$18,000.

Lichtenberger's case exposes what some call a tragic lack of coordination among agencies in El Paso County that could have helped prevent the sale or at least eased the trauma of losing her home, says Melissa Marts, program development administrator with Pikes Peak Area Agency on Aging.

While the Pikes Peak region has dozens of different organizations that are supposed to look out for seniors, the system failed Lichtenberger, Marts says.

Those agencies either didn't know about the situation or didn't fully appreciate what was happening until it was too late, she says.

Moreover, nobody involved in the court case, including the judge, inquired about why Lichtenberger never made an appearance in court or responded in any way to piles of legal documents left at her door throughout the duration of the court case.

So on a brisk day on Nov. 9, the Sheriff's Office came to her townhome on Overland Drive between Interstate 25 and Rockrimmon Boulevard to physically remove her, with Colorado Springs Fire Department medics standing by, and her daughter, powerless, watching in outrage.

"In our community, we can't afford to have people be homeless," Marts says. "This is what we want. This is just ridiculous."



Lichtenberger's son, John, tells the *Indy*, "It's clear Mom never participated in any of the legal proceedings, because she couldn't read the paperwork, and couldn't believe her home could be taken from her. None of us would want our loved ones to be preyed upon in that way."

Now, four months later, her two children only recently were named co-conservators over the cash from the home sale, which likely will be used to fund residency at an assisted living facility. Her townhome, meanwhile, has since been acquired, ironically, by a woman who helps provide affordable housing to elders.

For Marts, the case should become Exhibit A in a campaign to change the law and educate local agencies, including law enforcement, to prevent another such ouster in the future.

"This is a textbook case for us all to learn from," she says.

Born in Korea, Lichtenberger married a serviceman and immigrated to the United States where she became a citizen. She has a high school education.

She raised two children, JoAnn Russell and John, as her husband served his country, including deployment to the Gulf War in the early 1990s. After he died, she bought the townhome in 2010 with cash she saved from a lifetime of working in hair salons at bases where her husband was billeted, her son says.

But he notes his mom had always struggled with "debilitating mental health issues," and as she aged, her paranoia worsened. In the last eight years, she became estranged from her daughter, who lives in Minnesota.

She remained "very functional," he says, until the last few years when she began to demonstrate a decline in her ability to interact with other people. When the pandemic hit in early 2020, her isolationist behavior became more acute.

When he traveled from his home in the Washington, D.C., area to check on his mother in September, he found piles of legal papers she had not read. By that time, it was too late to undo the sheriff's sale and eviction.



To start at the beginning, Lichtenberger bought the townhome in the 6700 block of Overland Drive in May 2010, paying \$115,900.

When she purchased the home, she signed off on covenants that allow the association to collect fees from owners that fund maintenance of common elements, taxes, landscaping and care of the common grounds, lighting, trash removal, water and sewer charges and legal and accounting fees. The covenants also require payment of monthly fees within 20 days, after which late charges accrue and a lien can be sought, enforceable through foreclosure. The owner also is on the hook for legal fees and other costs, all at 18 percent interest per year, the covenants state.

For years, being distrustful of banks and not having a bank account or a credit card, Lichtenberger paid her monthly town home dues with money orders. Her son says at some point the Ravencrest association no longer accepted money orders, he's since learned, and it's unclear exactly why or when she stopped paying, or if she continued using money orders that weren't accepted.

Court records show that on July 31, 2019, Ravencrest recorded a notice of lien on the property.

On Nov. 8, 2019, process server Andria Beauvais, who has pleaded guilty in an unrelated case of theft while acting as a conservator over an elderly woman's estate, served a summons, complaint, answer and exhibits at Lichtenberger's address. In the affidavit, Beauvais swears that she "informed said person of the contents therein, in compliance with state statutes." The filing noted a court date of Dec. 12, 2019.



Lichtenberger with her kids years ago
Courtesy Lichtenberger Family



For purposes of identification, Beauvais described Lichtenberger as 65, female, Asian, 5 feet, 6 inches tall and 130 pounds with "salt & pepper" hair and wearing glasses.

On Feb. 6, 2020, Ravencrest won a default judgment for \$4,565 after Lichtenberger failed to enter an appearance and made no filings in the case.

At \$279 a month in condo dues, as stated in one pleading, that amount would represent about 16 months' worth of dues.

Eight months later, on Oct. 5, 2020, a summons was filed showing Ravencrest was seeking to foreclose on the lien.

Oct. 10, 2020, process server Michael Sebold served Lichtenberger with a notice of commencement of the action, the complaint and other documents at her home. Sebold swore in his affidavit that he "informed said person of the contents therein," and described her as 65, Asian, 5 feet, 5 inches tall, 120 pounds, with gray hair and not wearing glasses.

On Nov. 3, 2020, Ravencrest filed a court document seeking default judgment.

Nov. 24, 2020, Teresa Fabela, with Priority Property Management which manages Ravencrest, filed an affidavit, stating Lichtenberger had failed to pay assessments, fines, interest, fees and late charges totaling \$9,015, plus accruing ongoing assessments of \$279 per month, late fees of \$10 a month and interest of 18 percent per year. Attorney fees came to \$1,566; court costs were \$413, and the process service fee was \$50.

On that same date, Nov. 24, 2020, attorney Ashley Nichols of Denver, who represents Ravencrest, filed an affidavit stating, among other things, that, "Based upon reasonable inquiry, and to the best of my knowledge and belief, no Defendant named herein is a minor, *incapacitated person*, officer or agency of the State of Colorado, or in the military service." (Emphasis added.)

Nichols refuses to answer questions, including what her "reasonable inquiry" consisted of in determining that Lichtenberger was not an incapacitated person.



Nor would she address questions about what efforts were made to determine why Lichtenberger didn't respond to the court filings, whether she contacted any agencies for help in communicating with Lichtenberger and whether Lichtenberger's visual and mental impairments would have played a role in how Ravencrest moved forward. The *Indy* also asked Nichols how Lichtenberger could be considered legally served if she couldn't see to read the documents.

Nor did Priority Property Management respond to a phone call or an email seeking comment about how decisions are made to force a sheriff's sale, when the board vote was taken in Lichtenberger's case, which board members voted to sell Lichtenberger's property, whether anyone with the association had attempted to speak with Lichtenberger in person and whether anyone made attempts to contact her family or agencies who intervene in matters critical to seniors.

Rather, Nichols sent the *Indy* an email, saying, "Neither my client, nor myself, will be providing comment on the matter referenced below outside of the following: The Association, with advice from legal counsel, addresses each matter of delinquency in the community on an individual basis, and within the confines of the Association's governing documents and Colorado law. It is not the practice of the Board, or its attorney, to comment on the specifics of individual cases."

On Dec. 2, 2020, District Judge G. David Miller approved the order for judicial foreclosure, noting, "Defendant Ranae Lichtenberger has failed to plead or otherwise defend in this action." That was 16 months after the notice of lien was filed.

In his order, Miller awarded a judgment of \$9,015 and approved Ravencrest's application of 18 percent per year interest until the sheriff's sale took place in July.

'Defendant Ranae Lichtenberger has failed to plead or otherwise defend in this action.'

— ***District Judge G. David Miller***



The order further directed the sale's proceeds to fund expenses associated with the sale, taxes and insurance and to pay the \$9,015 judgment, plus interest. The balance was to be paid to the court for disbursement at a later date. (In early February, a judge appointed Lichtenberger's two children as conservators who will oversee \$180,000 in proceeds from the sale of her home, though those funds remained in a court fund at that time.)

Miller didn't respond to the *Indy's* inquiry seeking comment about what evidence was presented to him that Lichtenberger was not an incapacitated person and why he didn't further investigate, given that Lichtenberger never responded in any way throughout the proceedings.

It's worth noting that court records indicate Lichtenberger's case is one of only two — out of the 50 lawsuits filed by Ravencrest since 1995 — in which the condo association forced the sale of a property. The other property sale came in 2012. But Lichtenberger's sale was one of 14 homes forced to a sheriff's sale by El Paso County HOAs in 2020 and 2021, two-thirds of the 22 properties sold at a sheriff's sale during those two years. (See "How foreclosure happens," p. 9.) Of those 14, at least four belonged to people 59 or older; one woman was 73.

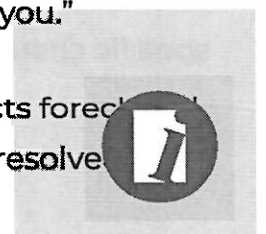
The other Ravencrest lawsuits, which sought unpaid dues and assessments or attempted to gain compliance with covenants, such as removal of junk, were dismissed or involved residents who worked out payment plans or paid the amounts due in full or saw their earnings garnished.

On July 13, 2021, Ravencrest gave the Sheriff's Office an accounting of its new "amount due" figure from sale of the property, which by then totaled \$17,740: \$9,015 for dues; \$4,194 for legal fees and costs and \$4,531 for post-judgment assessments, late fees and post-judgment interest.

Two days later, on July 15, 2021, the Sheriff's Office sold the property for \$207,100 to Viatcheslav Bakhour of Parker, a real estate agent.

Reached by phone, Bakhour tells the *Indy*, "I'm not interested in talking to you."

Deb Mynatt with the Sheriff's Office says via email the department conducts foreclosure property sales about 30 times a year, though an undisclosed number are "resolved" to the sale date.



The money is placed into the “court’s registry,” she says, and the Sheriff’s Office isn’t advised about funds distribution.

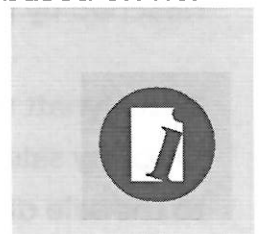
Redemption after a sale is limited, she says, to junior lien holders. The only time the property owner can “cure” the debt is prior to the sale date, Mynatt says.

“Please understand the Sheriff’s Office has an obligation to follow orders of the court,” she says.



Lichtenberger's townhome from which she was evicted
Pam Zubeck

Mynatt maintains the Sheriff’s Office, although not standard practice, “provided additional information and resources ... to help this person [Lichtenberger] based on her specific circumstances.”



But Marts tells a different story. When Marts contacted the Sheriff's Office asking that special attention be given to this case, she was rebuffed, she says. Moreover, she adds, "The Sheriff's Office neglected to say they have a behavioral team that could have gone out there [for the eviction]. They never mentioned that."

In any event, Ravencrest sought its payment from the court on July 28 and apparently received it.

El Paso County Assessor Steve Schleiker says via email it's rare to see an HOA go so far as to foreclose for unpaid dues.

"Sadly, an HOA usually can place a lien on a property if the owner becomes delinquent in paying assessments," Schleiker says. "Most will work with the owner, via payment plans, or reach out to extended family or lien holder (mortgage company). The owner being elderly and vulnerable makes this even more horrible."

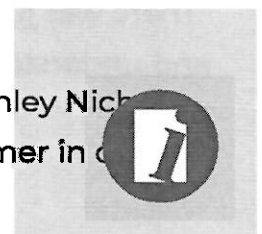
John Lichtenberger says he checked on his mom over the years by phone and visited a few times. He acknowledges she has disabilities. As near as he can reconstruct, Ravencrest changed the acceptable method of dues payments sometime in 2019 to no longer accept money orders.

"They [Ravencrest] did not provide adequate explanation or warning, and they sent her money orders back," he says. "She did not understand that she had to find another way to pay. She did not have a checking account or other means of payment, and she does not use a computer."

He questions whether she was legally served with the lawsuit documents. Besides impaired vision due to cataracts, he says, "She does not speak English well, and has a delusional/paranoid mental illness that causes her not to answer her door. She did not accept any paperwork."

In fact, he says, when he arrived in September, "We discovered this paperwork under her [outside] door mat."

Lichtenberger says he and his sister attempted to contact the attorney, Ashley Nichol, several times using several different methods of communication last summer in order to pay whatever fees were owed.



"This lawyer refused to communicate with us," he says.

While Nichols boasts on her firm's website "that communication is key to successful collections," it's worth noting she was publicly censured by the Office of Attorney Regulation Counsel for a situation in which she failed to communicate.

The 2016 censure resulted from her filing a lawsuit in 2014 on behalf of a homeowner association client in a foreclosure lien action, and then not telling the client that the case had been dismissed for failure to prosecute.

"She twice updated her client about the status of the case but failed to inform the client of the dismissal," the case overview posted by the Attorney Regulation Counsel's office said. "After not hearing from Nichols for several months, her client hired successor counsel, who discovered that the case had been dismissed. Nichols's firm paid the client \$15,000.00 to compensate for the client's losses. She self-reported her conduct to the Office of Attorney Regulation Counsel in August 2015."

The judge who heard the case found Nichols had violated three provisions of the Rules of Professional Conduct by failing to act with reasonable diligence and promptness in representing the client, by failing to keep a client reasonably informed about the status of a matter, and by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. (Public censure is a form of reprimand that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.)

When Lichtenberger's daughter visited her mom last June, she contacted the lawyer again to try to discuss how they could work with the HOA to prevent eviction, John Lichtenberger says, "But they aggressively moved forward with the eviction."

He believes the attorney and Ravencrest board members and representatives knew his mother lacked capacity to respond and should have reported her as an at-risk person to authorities.

"There was just no way any group of reasonable people would say she was legally served and understood what was happening and chose not to do anything," he tells the *Indy* by phone.



"I do think this HOA knew very well the situation my mom was in," he says. "I wonder why they were so willing and able to pursue an eviction of mom, an Asian woman living alone in a time of COVID, political turmoil, and anti-Asian and anti-immigrant violence across the country."

Out of desperation, John Lichtenberger contacted the Area Agency on Aging during his visit in September, and Marts sprang into action — but it was too late.

Marts says she discovered that the county's Adult Protective Services (APS) might have had some involvement in Ranae Lichtenberger's case, but didn't elaborate.

APS, under the Department of Human Services, investigates allegations of abuse, neglect and/or exploitation and provides for the safety and well-being of at-risk adults who are elderly or disabled, according to the DHS website. APS workers assess the need for protection and can intervene, if necessary, to obtain medical care, mental health referrals or help with living arrangements.

Asked about the Lichtenberger matter, APS spokesperson Kristina Iodice says in an email, "As I'm sure you understand, APS cases are confidential, and so I will not be able to say anything about a specific individual or circumstance, including confirming a report was or was not made about a certain individual."

Later in an interview, Iodice noted that DHS saw calls for service about at-risk adults decline during the pandemic, presumably because those people aren't interacting as much with others, which could trigger a report and a response to lend aid.

"There are not as many eyes looking out for the vulnerable population, and we can't respond if we're unaware of the situation," she says.

Because APS wouldn't discuss this case, it's not clear why case workers didn't understand that Lichtenberger likely qualified as an at-risk person, which can prompt involvement by supportive agencies.

An at-risk person is defined as someone older than 18 who's unable to perform or obtain services for his or her health, safety or welfare or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her personal affairs.



The law defines self-neglect as failure to act by an at-risk adult which substantially endangers their health, safety, welfare or life by not seeking or obtaining services necessary to meet the adult's essential human needs. (See "Signals and solutions," p. 10.)

In a move that might suggest Ravenscrest *did* have a grasp of Lichtenberger's limitations, Ravenscrest took it upon itself to have her gold 1999 Chevy Lumina towed from her parking space at her townhome — at 3:15 a.m. — 17 days before the eviction took place.

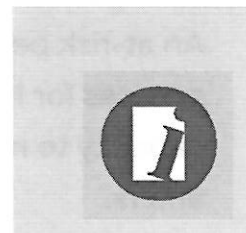
"Sure seems they were seeing her as a bit 'incapacitated,'" Marts says.

On the day of eviction, it was a traumatic scene for his mom and sister, who had rounded up APS and Marts to try to ease the process of removing her mother from her home, John Lichtenberger says.

"Mom was extremely traumatized by her forcible eviction. They grabbed her by the neck and arms and pulled her from her house," he says via email. JoAnn was there, he says, because he wasn't informed about the actual eviction date in enough time to make arrangements to be away from work. But he says he was in almost constant contact by phone with his sister.



Melissa Marts
Courtesy Melissa Marts



We discovered this paperwork under her [outside] door mat.

— **John Lichtenberger**

Marts says that by the time deputies, police and firefighters arrived for the eviction, they finally grasped the gravity of the situation and their role in it.

She says those on scene told her, "If I'd known we could call an agency like yours, well, now we will call you guys." Colorado Springs Police Department transported Lichtenberger for a psychiatric evaluation after being called for assistance, spokesperson Lt. Jim Sokolik says.

"Not to say my agency can stop the sale of the house," Marts says, "but we can put resources in place to help with the transition. If the HOA knew that an agency like mine existed, they could pick up the phone and ask someone to do a wellness check on her — whether it's my agency, or Silver Key or APS. With this case, they do nothing."

Bakhour, the real estate agent who bought Lichtenberger's town home, sold it three days after she was evicted to Gloria Horne for \$227,000, or roughly a \$20,000 profit. (Bakhour has flipped two other properties in Colorado Springs. He bought a house in Skyway for \$480,000 in June 2018 and sold it for \$780,000 in August 2019. He paid \$260,000 for a house in Village Heights in February 2021, and sold it in May for \$375,000.)

Ironically, Horne runs Vibrance Senior Care, a small nonprofit that serves seniors needing shelter, victims of elder abuse and the chronically homeless. Marts, who serves on the Vibrance board, says Horne's plans for the property are to house a senior at below-market rent.

Marts says how the case was handled from beginning to end is an indictment of the system that's supposed to protect seniors.

She tells the *Indy* she wants to start a campaign to educate law enforcement and homeowner associations of better ways to deal with vulnerable adults and seniors



She's hoping to persuade CONO, formerly the Council of Neighbors and Organizations, to host training sessions for HOAs about suggested methods in dealing with elder HOA members or those who have some other debilitating issue.

"Do you want to be the HOA to take an older person's house out from under them?" Marts says HOAs should be asked. "Wouldn't you want to go knock on the door first?"

Asked about that, CONO executive director Sara Vass says by email, "We are open to the idea of helping HOAs in this situation as our mission is to strengthen neighborhoods and we serve all neighbors and neighborhoods through engagement, education and trust-building."

Also bear in mind that the law doesn't allow a judge to take into account a person's age, medical condition, mobility or income in staving off an eviction, Marts reports, based on what she was told by a local magistrate who oversees evictions.

In other words, Marts says she was told that people can even be evicted from nursing homes or assisted living facilities. Changing that would be up to the Legislature. (See sidebar, 'That's too much power.')

Marts has hopes of closing gaps among service agencies to prevent a foreclosure from reaching the sale stage.

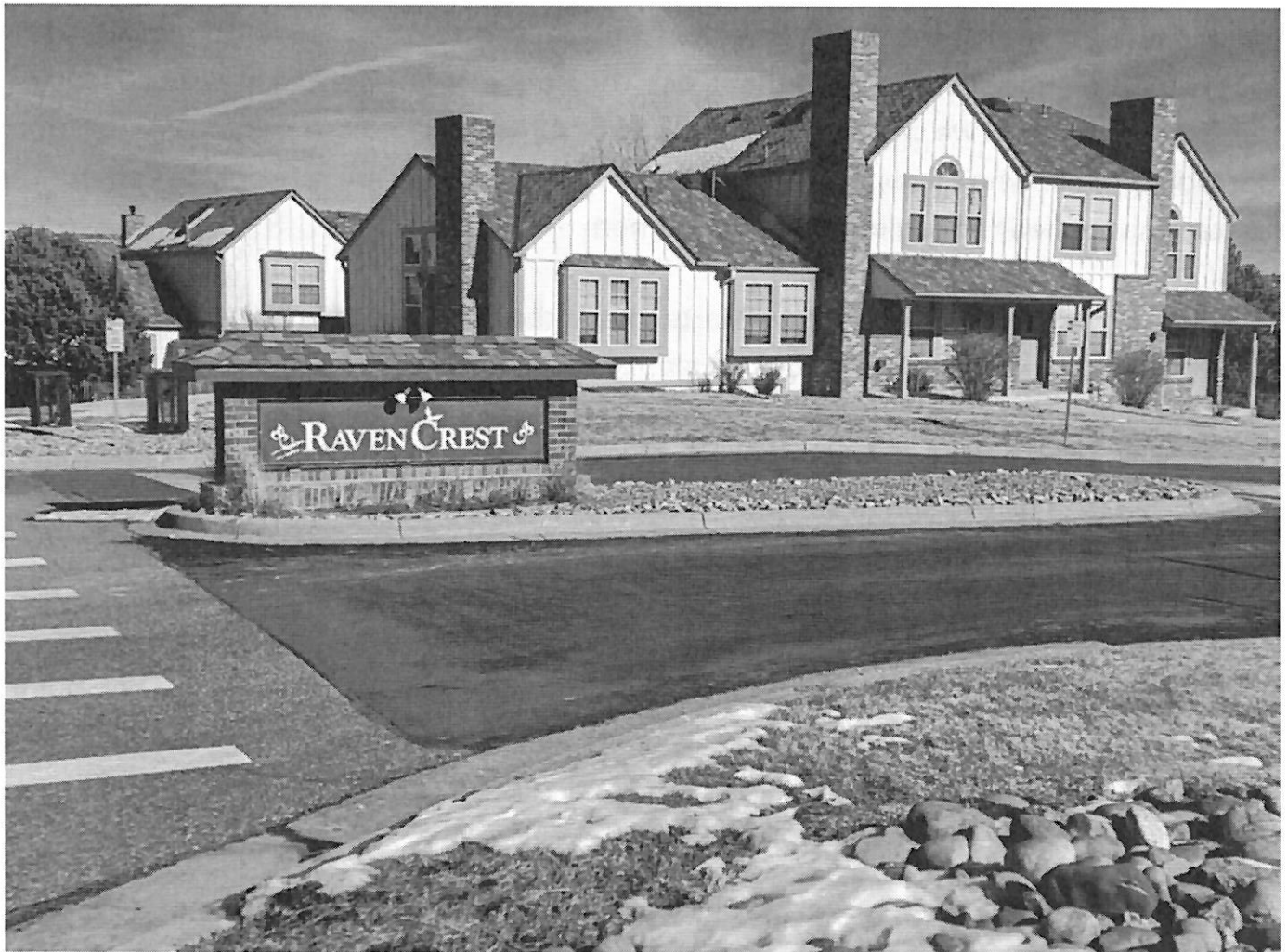
She was among the founders of the recently formed Pikes Peak Elder Justice Center, which aims to prevent and eliminate elder abuse in the Pikes Peak region. NextFifty Initiative, a private foundation, awarded the center a \$25,000 grant in December, which Marts says will be used for staffing and administrative startup costs for the organization's elder shelter program, designed to provide safe and temporary housing for at least 60 older adults who have been exploited, neglected or mistreated.

When the Elder Abuse Coalition recently reached out to the magistrate who oversees eviction cases, "She first reminded everyone that evictions are legal," Marts says. "But she expressed extreme concern for older adults and was unaware that her court could reach out to my agency or Silver Key to step in and help get services in place for people." It's a first step toward awareness and cooperation, Marts says.



According to Marts, the magistrate also expressed interest in working with entities like the coalition if she identifies an older adult in her courtroom. That seems like a step in the right direction, but as Marts notes, "Again, the problem is, what happens if the older adult is unknown to all the entities, and people just write them off as no-shows and no one cares? We know a little support can go a long way."

Marts suggests judges who oversee orders for sheriff sales be more inquisitive in cases where a defendant doesn't respond in any way to a court action, especially if that person might be a senior or at-risk adult.



The Ravencrest condominium complex entry in northwest Colorado Springs

Pam Zubeck

On a practical level, Lichtenberger's home sale and eviction also mean she now can't qualify for Medicaid — because she has money from the sale now, not a home — to fund her care in an assisted living or nursing care facility. "But if she had stayed in



house, she would have qualified for Medicaid due to her low income and could have aged in place," Marts says.

The Lichtenberger case, Marts says, demonstrates the "intersectionality of behavioral health, homelessness, and nuances of racial inequity.

"I believe it is yet another sorry example of failing a person in need," she says. "Ideally the HOA leadership would have had the older adult's — a person who has owned outright her property for years — needs in mind and looked for ways to get her some help. They did not. Next the eviction court should have some protections in place to help a person preserve their home, especially if they own it outright, and offer resources for people to get help. Then, the sheriff's office that drops the notice might want to make a call to an agency like mine so we can do a wellness check. All we ask for here is some compassion for older people who have paid off their home and think they are safe only to find out the system has pulled the rug out from under them — literally."

The only bright spot in this episode, Marts says, is the chance it affords local agencies to craft a more responsive system to avert similar outcomes in the future.

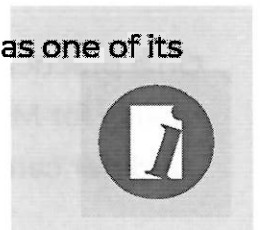
On Nov. 17, John Lichtenberger spoke to the local Commission on Aging in hopes someone else's parent can avoid such brutal treatment.

"We could have prevented her from being dragged from the house she owns," he said. "We could have prevented her from being cut off from everything she owns and any coping mechanism she has. I think we're moving forward with a better life for her, but it didn't have to be this way. We as a society could have done better."

Commission Chair Elisa Santos told him he's not alone.

"What we're hearing is this is not an isolated instance," she said. "We will take everything you said and see how we can advocate better for seniors who may find themselves in this situation in the future."

After Lichtenberger spoke to the commission, the group adopted housing as one of its top three issues in 2022.

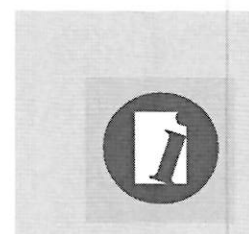


Looking back, he says his heart breaks over what his mom went through. After her eviction, she was hospitalized at Peak View Health and St. Francis Medical Center for treatment and has since transitioned to assisted living.

"We will do everything we can to see that my mom is taken care of and recovers from this," he says.



How foreclosure happens





1801 California, Suite 3000
Denver, Colorado 80202

copovertylawproject.org

March 8, 2022

Dear Members of the House Transportation and Local Government Committee,

My name is Lauren Rafter, and I am an attorney at the Colorado Poverty Law Project. We are a nonprofit organization whose mission is to prevent homelessness through legal representation, education, and advocacy. I appreciate this opportunity to submit written testimony in support of House Bill 22-1137.

We commend Rep. Ricks for sponsoring this legislation that would help stabilize housing for homeowners who belong to an HOA. When times are tough financially, it can be incredibly difficult to keep up with the mortgage, other essential expenses, and high HOA fees, especially when compounded with unreasonable late fees. We at CPLP believe that falling behind on HOA fees should not immediately put homeowners at risk of foreclosure – causing them to lose the substantial investment they've made and potentially experience homelessness.

We have seen that these issues have contributed to the housing insecurity of our own clients. To share an example, one of our clients who preferred to remain anonymous reached out to us for assistance, describing how:

I lost my job due to Covid. I have not been able to find another job, though I am spending all my time job hunting. My savings are dwindling. My HOA fees are \$400 a month, and this is the first month that I would not be able to pay. I had thought I would have been able to find some assistance to pay by now, but no luck.

I don't know what to do. If I pay my HOA fees, I won't be able to make car, or insurance payments, and my vehicle will be repossessed. I am already behind on those payments. But if I don't pay- they will start proceedings, and I will be out on the street.

I don't know what to do. I have nowhere to turn.

This legislation would help people in this situation by allowing for a reasonable repayment plan before a foreclosure could be initiated due to a late payment of assessments. This type of grace would spare many people the tragedy of experiencing a foreclosure, while also ensuring that the HOA is made whole. For these reasons, we respectfully ask that you please vote yes on HB22-1137.



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Community Association Management

**Colorado Registered Investment
Advisors
CRD #113469**

**Colorado Registered Investment
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CRD #4416739**

MEMBER OF
Community
ASSOCIATIONS INSTITUTE

FINRA
Financial Industry Regulatory Authority

March 6, 2022

Representative Naquetta Ricks
Transportation & Local Government Committee
Colorado State Capitol
200 E Colfax Av
Denver CO 80203

Dear Representative Ricks,

My name is David Stiver. I am the President and CEO of Team Strategy Inc., a full-service Community Association Management, and Investments Company. Team Strategy has been a member of the Community Associations Institute, also known as "CAI," since 1995.

I understand CAI is opposing HB22-1137. I am nevertheless writing to support the bill, and to ask for reforms (to existing legislation) that would encourage HOAs, community association managers ("CAMs"), and HOA attorneys to act responsibly in addressing disputes and collections from homeowners. After all, these aren't merely houses. These are the single largest investments we will ALL (one time or another) make in our lives.

Colorado statutes that govern HOAs, such as the Colorado Common Interest Ownership Act ("CCIOA"), encourage financial understanding and consideration toward homeowners. But many associations ignore that encouragement, because it is not required by the community's Declarations and Covenants. Instead, they act like quasi-governmental entities, with the knowledge that they will use full force and effect of the law just because they can.

In my opinion, these practices are an abuse of the HOA's rights under the community's Declarations and Covenants. The mere fact that the CAM company, the HOA attorney, or the association can force someone out of their home does not mean that they should. The purpose of a homeowner's association is to provide for the care and maintenance of the property, not to be bankers and make huge profits.

And make no mistake—these practices do in fact drive up huge profits, especially for the attorneys, and at the expense of the homeowners the HOAs are supposed to serve. I have an association that I took over managerial duties from a competing management firm in 2016. At the time I took over management, the total accounts receivables (delinquencies) were approximately \$28,000.00. This was possible because the collection policy at the time, written by the managing agent and legal counsel, called for any account that was 60-days past due (\$118.10) an Assessment Lien is issued. After six (6) months the account is turned over to the attorney, immediately, the property owner would receive a demand letter from the HOA attorney. The attorney would usually bill \$380.00 for this task, for one (1) hour of work. Also, the CAM Company would add administration fees of \$10.00 to \$25.00. If the account went to county court, the HOA Attorney would add another \$1500.00 to \$2500.00—all on top of an initial indebtedness of \$118.10.

QUARTERLY ASSESSMENTS (Excluding Administrative/Legal Fees)

60 Days: \$118.10 (Assessment Lien)

6 Months (Assessments) @ \$65.00 = \$390.00

6 Months (Late Fees) @ \$25.00 = \$150.00

6 Months (Interest) @ 1.5% (18% per annum) = \$8.10

Total: \$548.10 (Personal Judgment)

These threats and outrageous expenses are not necessary to run an association. Since we took over for this association, we have reduced the accounts receivables to \$7,000, with zero foreclosures, zero court actions, and zero bankruptcies. We did this by stopping all legal action relating to foreclosures and bankruptcies, suspending late fees and penalties during the COVID19 shutdown, and merely collecting what was owed (**AMNESTY-CLEAN BREAK**)(and no more) as part of the Closing Process. Most importantly, we provide financial education to assist homeowners with budgeting, just like CCIOA encourages CAMs to do. (None of this required raising assessments. In fact, we were also able to reduce quarterly assessments from \$65 to \$50, and late fees from \$25 to \$15.)

“When the delinquency of an Owner’s account equals or exceeds six months of assessments, the Board of Directors will vote on what further legal action is required. The Board may determine to have the Association’s attorney file a personal suit against the Owner, foreclosure on the lien to have the property sold or appointment of a Receiver to take the property to generate income. All costs and fees incurred by the Board may also take such other action as is authorized by the governing documents to include suspending voting rights or use of common areas.” (Collection Policy, The Metropolitan Club, adopted December 20, 2013)

Other HOAs, CAMs, and HOA attorneys refuse to take these or similar efforts to assist homeowners, and instead merely enforce what legal remedies they can. They have a huge financial incentive to do so. In fact, one organization that has publicly opposed HB22-1137 once told me, when I challenged them about the fees they charge, that they “are in the business to make money.” This, again, is simply inappropriate.

“As Board Members, facing collection issues can sometimes be challenging. These owners are your neighbors. Collection of community association assessments is not “faceless” like credit card, medical, or student loan debt. These owners live in the community, (maybe) show up to your board meetings, and will (maybe) end up on your board. Be respectful and treat each case as an individual matter; with its own facts and circumstances. As the saying goes, everyone is fighting a battle you know nothing about. Be kind.

Always.” (Fresh Starts – Tools for Decreasing Late Assessments, Ashley M. Nichols, Community Connections, Community Associations Institute – Southern Colorado Chapter, First Quarter 2019)

In conclusion, I am opposed to over-regulation as it relates to small businesses and corporations. However, as a **STRONG PRIVATE PROPERTY RIGHTS** individual I have always advocated for the use of Small Claims Courts and their usefulness for the simple fact that it allows for **DUE PROCESS**, is relatively **INEXPENSIVE** to both the property owner and the association, and in many respects produces the same outcome. As a former judicial employee, and Community Association Manager I have always believed that these smaller cases and civil judgments are more appropriate in the smaller courts and will provide relief to the larger County and District Courts civil and criminal dockets.

I ask for the legislature to support HB22-1137 and to encourage HOAs, CAMs, and HOA attorneys to exercise their rights reasonably and responsibly.

Best Regards,

A handwritten signature in black ink, appearing to read "David C. Stiver", with a long horizontal flourish extending to the right.

David C. Stiver BA MA

President/CEO

Colorado Registered Investment Advisor #113469

When I went to write the settlement check, I asked the attorney why no one had tried to contact me. The attorney informed me that the HOA had sent a certified letter to my address. In fact, that letter was on the table in their office when I arrived—unopened, and marked as returned to sender. The HOA and its attorney knew that I had no notice of any issue. But the statute requires only that the letter be sent—not that it be received. They had complied with the minimum requirement and proceeded with a lawsuit. Nothing more was required.

Fortunately, I had the means to be able to write that check. I've learned of neighbors who were not so lucky. One had to pull funds from their retirement account. Another had to file for bankruptcy to save their home.

This kind of behavior is simply unacceptable. This is not how neighbors should be treating their neighbors—not in Colorado.

But too many HOAs and HOA attorneys treat the current statutes as a profit center. Too many have learned that it is easier, and more profitable, to use harsh and threatening tactics to force homeowners into submission instead of making minimal effort to reach out to homeowners and resolve issues before the costs escalate out of control. Unless changes are made to remove these perverse incentives, this is certain to continue.

HB 22-1137 addresses these incentives, and provides protection for homeowners and promotes efficient and inexpensive resolution of disputes with homeowners associations while preserving HOAs' ability to collect unpaid amounts and function. It requires outreach before lawsuits are filed; it requires HOAs to avoid wasteful and expensive spending to recover small amounts; and it channels any disputes that cannot be resolved without going to court into the small claims court, which is designed to handle smaller matters on a streamlined basis.

The changes we are asking for in HB22-1137 are possible—and they work. Shortly after all of this happened to us, I joined our HOA board, where I now serve as President. As a board member I make a point for our board to monitor payment of assessments and inquire when something is amiss. Experience has shown that minimal efforts to reach out to the homeowner and let them know that there is a problem is often all that is needed; a simple phone call to bring the issue to the homeowner's attention usually solves the problem. Delinquencies and legal costs have dropped significantly as a result.

HB22-1137 strikes a proper balance that currently does not exist. It preserves HOAs' ability to function and collect unpaid dues, and gives homeowners badly needed protection against predatory and abusive conduct. For that reason I ask you to support it.

Sincerely,

Douglas N. Marsh
21558 Omaha Ave
Parker, CO 80138
(801) 556-4145
douglas.n.marsh@gmail.com

March 9, 2022

To our Representatives of the House Transportation and Local Government Committee:

I am writing to ask you to support HB22-1137, on HOA Board Accountability and Transparency. This bill makes important reforms to statutes that in their current form encourage improper and irresponsible behavior by HOAs, property managers, and HOA attorneys in pursuing collection actions against homeowners. Change is necessary to bring these improper incentives into alignment. HB22-1137 encourages HOAs and homeowners alike to act reasonably and efficiently to avoid the expense of litigation where possible, and work together to resolve disputes in a cost-effective way.

HB22-1137 is supported by the Colorado HOA Homeowner Advocates (of which I am a member), the Colorado Senior League, the Colorado Poverty Law Project, the Pikes Peak Area Agency on Aging, the Greater Metro Denver Ministerial Alliance, the Colorado Center for Aging, and the National Association of Real Estate Brokers - Colorado Chapter.

The problems HB 22-1137 addresses are widespread and serious. In 2021 alone, 712 judicial foreclosure actions were filed in Colorado courts. 590 of these were filed by HOAs or other community associations. There are also many individual property managers and HOA attorneys who have found in the current statutory scheme opportunities that they have been able to exploit for their own personal gain, at the expense of homeowners across the state. For example, a single HOA attorney in the Denver Metro area has filed 578 judicial foreclosure actions all on her own, including 360 since January 2017—a rate of at least one lawsuit every week for the past five years. Another HOA attorney filed 287 actions to recover money from homeowners in 2021 alone.

Behind every one of these numbers is a real person. I understand this all too well, because I am one of those numbers.

We bought our home in Parker in 2016, where we are members of two HOAs—a master association, and a sub association. When we moved in, we signed up to autopay the dues to both HOAs. Unbeknownst to me, something went wrong, and while payments were automatically made to the master association, they were not being made to the sub association. About two years after we purchased our home, someone came to our doorstep and served us with a summons and complaint from our HOA. Until then I had no idea there was a problem. No one had called me, though they had my phone number. No one sent me an email, though they had my email address. No one had ever told me anything was wrong until the process server served us with a lawsuit.

The total amount of unpaid assessments at that point was about \$100. But now, because a lawyer was involved, we also had to pay legal fees. This drove the total amount in demand to over \$3,000. 90 percent of that amount went straight to the attorney as payment for her legal fees. I had little choice but to pay that amount or risk that the legal fees would climb even higher.