

House Transportation & Local Government

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HB22-1137 HOA Board Accountability & Transparency

Typed Text of Testimony Submitted

Name, Position, Representing	Typed Text of Testimony
Susan Lang Against Self	This bill punishes all HOA's because of a few bad actors. Current practices in place give the best options to handle delinquent homeowners. I vote against this
Karen Fabian Against Brookhaven Condominium HOA	Opposed
Dawnette Moore Against Brookhaven Condominium HOA	Opposed
Elizabeth Frick Against Parkside at Quail Ridge HOA	<p>As President of our Homeowner's association, I oppose HB 22-1137, I feel that this law takes away our power to seek judicial assistance and compromises our contractual rights to collect costs and fees when a homeowner does not pay the assessments that they agreed to when purchasing their unit.</p> <p>I believe that most, if not all, HOAs act in good faith and that this bill will hurt both the HOA and the owners. It would require the HOA to broadcast the owner's delinquency in an open meeting, violating their privacy.</p> <p>I OPPOSE HB 22-1137.</p> <p>Thank you.</p>
Mark Paulissen Against Self	Good day, I am writing to testify that I am against passing HB22-1137, HB22-1139, and HB22- 1239
Heather Vasquez Against Self	This bill is a one-size-fits-all attack against community association's rights to protect their neighborhoods from people who refuse to follow the covenants they agreed to when they purchased. We all know there are bad actors, on both sides of the relationship, but the solution is not to punish every HOA – and every owner who lives in an HOA – because a small minority of homeowners don't treat their neighbors with dignity and respect. Courts are well equipped to determine who is being reasonable in covenant enforcement and fine matters, and it is never okay to make an association have to choose between ignoring covenant enforcement (including assessment collection) and raising dues to pay

	<p>for that covenant enforcement. Let the courts decide if the association is reasonable. This law takes away a community’s power to seek judicial assistance and interferes with existing contractual rights to collect the costs and fees a recalcitrant homeowner forces an association to incur. Potential amendments may even remove attorney fees from the scope of an Association lien. In other words, assessments will have to go up significantly for associations to fulfill their duty to enforce - and as the president of our HOA, people do not want to be paying an immense amount for HOA fees.</p>
<p>Douglas Marsh For Self</p>	<p>In 2021, 712 judicial foreclosure actions were filed in Colorado courts. 590 were filed by HOAs. A single HOA attorney in the Denver area has singlehandedly filed 360 judicial foreclosure actions since January 2017—a rate of at least one every week for the past five years. Another HOA attorney filed 287 actions to recover money from homeowners in 2021 alone.</p> <p>Behind each of these numbers is a real person. I understand this all too well: I am one of those numbers.</p> <p>As homeowners in Parker, we are members of two HOAs—a master and a sub association. When we moved to Parker, we signed up to autopay the dues to both HOAs. Unbeknownst to me, something went wrong: payments were automatically made to the master association, but not the sub. About two years after we bought our home, someone came to our doorstep and served us with a summons and complaint from the HOA. Until then I had no idea there was a problem. No one had called me. No one sent me an email. No one had ever told me anything was wrong.</p> <p>The total amount of unpaid assessments at that point was about \$100. But because a lawyer was involved, we also had to pay legal fees, driving the total amount in demand to over \$3,000. 90 percent of that amount went straight to the attorney as payment for her fees. I had little choice but to pay that amount or risk that the legal fees would climb even higher.</p> <p>When I went to write the settlement check, I asked the attorney why no one had tried to contact me. The attorney told 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.</p> <p>Fortunately, I was 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 unacceptable. This is not how neighbors treat their neighbors—not in Colorado.</p> <p>HB22-1137 strikes a proper balance that currently does not exist. It preserves HOAs’ ability to function and collect unpaid dues, and gives</p>

	<p>homeowners needed protection against abusive conduct. For that reason I ask you to support it.</p>
<p>John Lichtenberger For Self</p>	<p>To Whom It May Concern,</p> <p>I am writing in support of better protections for homeowners facing legal action by HOA's, and I ask you to endorse HB22-1137.</p> <p>My mother, RanAe Lichtenberger was forcibly evicted from a home she owned outright and had lived in for over 10 years. The Ravencrest Condominiums Association changed the payment methods they would accept without legal notice, returned mom's payments, and aggressively pursued legal action to foreclose and evict her. In my opinion, she was never legally served any of the paperwork. She is blind, disabled, and doesn't read or write English well. My sister discovered the paperwork shoved under mom's doormat. We tried to contact the HOA and their legal representation Ms. Ashley Nichols, begging for the opportunity to pay whatever mom owed and make it right. They would not communicate with us.</p> <p>The El Paso County Sheriff's office arrived on November 9, 2021, grabbed our 5-foot-tall elderly mom by her neck and arms, and dragged her out of her house screaming. She was hospitalized because of this event while her belongings were thrown out of the house in garbage bags. She never understood what was happening. She never even had a chance to get her purse.</p> <p>This did not have to happen. We literally begged for the opportunity to pay the HOA once we found out about it. In my opinion, the HOA took aggressive action because of the housing market to evict an elderly, at-risk woman living alone. I question how the HOA, their representation, the courts and the El Paso Sheriff's office were so willing to evict our mom in a time of pandemic and anti-immigrant and anti-Asian violence.</p> <p>Respectfully, John Lichtenberger</p>
<p>Ashley Young For Self</p>	<p>It is important to protect homeowners from unnecessary foreclosures from Home Owner's Associations. HOA's enable fraudsters that take advantage of people facing foreclosure. No one should loose their home to an HOA, especially in this day and age where it is more likely that people will end up homeless as opposed to being able to purchase or rent another place to live.</p> <p>I rented a home (9878 Aftonwood St. Highlands Ranch, CO). The homeowner had to fight the HOA against fines, including one egregious</p>

	<p>fine pertaining to a boat that a neighbor parked in front of the home without permission. He ended up losing the home to HOA foreclosure, who transferred the deed to Jordan F Head. (For reference, see State of Colorado v. Colt Holdings, LLC, and Jordan Head, an individual). My family had a valid lease during the foreclosure, but habitability became an issue while it was owned by Highlands Ranch HOA, who refused to cover any repairs. When they transferred the deed, Jordan Head was at my door to evict me immediately. He threw a fit and kicked our pumpkins and plants off the porch, which prompted me to call the police. He told police he was a process server who had no interest invested in the home, and the police believed him. He lied in court. The judge believed him. My family was evicted, so now I have an eviction on my record until the end of 2023, making it very difficult for my family to find a home. We have had to live with relatives since the end of 2018 due to the actions of a Home Owner's Association combined with the rising costs of housing in Colorado.</p>
<p>Melissa Marts For Self</p>	<p>I work on behalf of older adults and over the last three years have seen a need to protect housing for them in order to increase stability, longevity and reduce impacts on state and federal social service dollars. Recently, I was shocked to learn that HOAs can foreclose and sell a person's home. As a homeowner, I know liens can be filed but never have I heard of such a thing as an HOA selling a house. Specifically I worked with the 67 year old woman in El Paso County who owned her home outright but had her HOA sell it out from under her. This 67 year old woman lost her well-being, her life's savings and is now living in an assisted living that eventually Medicaid will be paying for, due to the fact that the HOA sheriff sale allowed the home to be sold at much lower than market rate. If she could have stayed in her home this Medicaid expense would have been avoided, let alone the heartbreak of an older adult who has worked so hard. HOAs and their management companies need to take accountability to modernize their practices. First, having better communication with their homeowners is essential, second being held to an 8% or less interest rate on fees keeps them in line with a real debt recovery, not what could look like financial abuse of an older adult. These steps will go far to make neighborhoods and our state better, safer and fiscally accountable for everyone.</p>
<p>Rita Widmann For Colorado Center for Aging</p>	<p>There are times when the owner is not notified and I would ask that the HOA board be required to use at least 2-3 methods to reach the owner? Certified mail is an excellent choice.</p>
<p>Heather Smith Against Sierra Pointe Homeowners' Association, Inc. & Warren Management Group</p>	<p>In accordance with the Colorado Common Interest Ownership Act and IRS Codes pertaining to non-profit and not-for-profit corporations, Community Associations are required to maintain their income within the framework of an established, published, and approved budget. As a result, Association functions and expenses are naturally restricted by the actual cash equivalent of their monthly or annual income. The current collection framework requires an Association to pursue collections</p>

	<p>through their Board and Management for 3-months before pursuing collections through their attorney or a collection agency. This means, that if an Association Member fails to pay and elects to ignore notices of balances due, the Association must restrict their day to day operations until those funds are received. Colorado provides new buyers with ample notice regarding an Owner's Membership and obligations to the Association prior to a legal closing on a home. To elongate the Collections Process would not only increase the costs associated with facilitating the collections process, but would also create an undue strain on the day-to-day financial competency of the Association. Associations simply cannot bare the additional expense and additional delays in receipt of income this legislation will create.</p>
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Honorable Members of the Transportation and Local Governance Committee

I have critical feedback for [HB22-1137](#). This bill has numerous flaws and loopholes that will create situations where responsible owners that keep current with their HOA assessments are forced to shoulder the burden and increased costs for owners that fail to meet their financial obligations. This bill creates unacceptable costs for HOAs especially large HOAs. Please consider real world conditions in a large HOA with 3200 units as I outline below.

As a senior HOA Board member, I deal directly with the other Board members in reviewing all delinquent accounts every month and quarter. We pulled back from the Management Company and our Collection firm several authorities to reduce our legal costs which for a large HOA are very expensive. Our Board has to authorize every lawsuit and we only do so once certain conditions have been met.

We did this for a few reasons. One is to reduce runaway legal costs for the owners and the HOA. We know that when costs go over say \$1000 a payment plan with monthly payment that could be paid gets harder. We also want to reduce legal costs for the HOA but owners have a part to play in that. As a Board we work to prevent this by reviewing the accounts more in depth and communicating with owners new and old. This puts a considerable strain on the Board members and the Management. A small HOA of 100 is easy. Reviewing 500-700 overdue accounts is much harder and time intensive. The Board focuses on accounts with balance \$500 and greater. We must treat all owners the same and we follow set processes to ensure this. Some owners simply do not care at all and this needs to be factored into any new law proposals.

Owners should not be made to pay more since some owners refuse to pay assessments or not maintain their properties.

To give you a sobering statistic for our large HOA of 3200 owners. **79% of the debt owed to the HOA is from only about 60 owners (out of 3200) so less than 2% of owners are responsible for the vast majority of the debt owed to the HOA.** Our AR balance sheet runs about \$120K for an annual budget of about \$800K. So of that amount \$95K is from just 60 owners to scale and scope our HOA. **The super majority of owners are paid ahead, current, or at most 1-2 quarters behind.** Our HOA assessments are the lowest in the City and maybe the State at only \$48.50/qtr or \$194/yr for a large HOA >1000 units. We are one of the last true HOAs in Colorado Springs. After us it all went Metro Districts, and those owners pay quite a bit more. These low assessments are made possible by the large number of owners but can create many issues when it comes to collecting overdue assessments. We don't send accounts to collections when their balance is only \$300 but we do step a lien. A contractor fixing one's house is legally entitled to do the same. Still some owners don't care about a lien leaving the HOA little recourse than proceed further. **HOAs must be maintained as assessment are critical to ensuring services are provided and**

maintenance is completed. Reserves accounts don't fund themselves and large HOA have real property worth millions that must be maintained. All owners must pay their fair share over time and properties maintained.

We have the State required Collection's policy. For our steps we always send written overdue notices both USPS and email if the owner provides an email. We have always done this. We do find some owners purposely fail to provide an email and phone number. We also find that some owners say they never get their USPS mail both regular and certified. In fact, certified mail is often returned more times than not. Just like the County Assessor, owners are required to provide a current address. So those owners that don't makes contacting them problematic. Some owners purposely try to hide their current address or say their rental manager company is at fault though they never provided their contact information either. The Board often hears the owner placing blame for not paying their assessment on everyone and everything but themselves.

When the owner gets to be a year overdue with assessment, or a balance of several hundred dollars we step up enforcement trying to use the lowest level steps. We start with an intent notice and then a lien notice. Our late fee is only \$25 per quarter. While we have a higher interest rate that does not amount to much since we have such low assessments. If warranted we waive interest and some late fees if the owner wants to settle or pays their account current.

After that we send it to collections with our legal firm. From there we require our legal team to **send three 30 day notices before any legal action. Those notices are not free as that is legal time and it's billed to the owners account as it should be.** At all times the Board will accept a payment plan as required or even a settlement if we can without a loss of hard costs to the Association which is not fair or reasonable to the other owners who pay their assessments on time. I wish more owners would come to the table and work out a payment plan early in the process, but most don't. Many don't even show up for court. **I have had retired O-6/COL and DOD GS-14 and GS-15s try and avoid paying their assessments on their rental properties for years which is inexcusable. The vast majority of owner are responsible but the owners that are not wreck the HOA budget and often don't maintain their properties either.**

Only after the three formal legal notices from our Attorney do we then Board vote to authorize a suit. It amazes me owners just ignore these and even Court orders

As a matter of fact, we try to avoid foreclosures and we have done less than 5 to 6 foreclosures since 2015. I do believe some legal firms find lawsuits more direct and productive, but our Board does not always subscribe to that. For use it's a matter of last resort but one that should not be taken away. HOA should be limited to collected debt any more than any other business or organization.

When we have rental properties, we do use Receiverships in some cases since some owners try to avoid paying and this is a lower step than foreclosures. These seem to be effective in some cases but the legal costs to process these are expensive as well. If the owner would have paid their assessment these would never be necessary.

While our legal team and Courts do recommend or approve of wage garnishment, Our Board and I are not a huge proponent of that. I do agree that garnishments should be limited to having an account with at least \$2500 remaining. As an example, we have one owner with no fines that has not paid regular assessments in **4.5 years**. All attempts to contact have been futile and ignored. Owner did not show up for court. What can a HOA do at this point? What would have been 800 or so in assessments now with legal costs is several thousand. This is not the HOA fault. Yet this owner has a new \$60K pickup truck in their driveway, has no bank accounts and seemingly is paid in cash for all contractor type work he seems to do. Those legal costs have to be paid and can't be a loss to the HOA.

For our HOA we never use late fees, Covenant violation fines, interest to fund or balance our budget. That is not a sound practice. Those items have no set budgeted amount. **Each year the owners that don't pay regular assessments or are several quarters late create a \$40-45K hole in the yearly budget and that adds up year to year.** The HOA has multitudes of vendors to pay for things like maintenance, repairs, snow removal, landscaping, trash pickup, pet waste cleanup, inspections, water, utilities, management company etc. Since our assessments are so low per owner it's critical, they are paid. I can never understand why some owners just pay late every month when the HOA has so many free payment mechanisms.

I don't find that moving a large HOA collection process into a small claims court is feasible or reasonable. We have too many accounts. Think of Highlands Ranch HOA/Metro with 29K owners trying to collect overdue assessments on 3000 owners in small claims. That is not doable. Small claims courts can't handle the loads HOAs would put on them. Board members on their own time would have to show up to claim court otherwise the legal costs would fall onto the HOA and the other owners. That is not realistic or fair at all.

Please consider the points and issues raised above when assessing any possible draft bills. All HOAs are not the same when it comes to operations, assessment rates. Large HOAs with lower assessments look to be negatively impacted by this draft bill. The HOA would have to raise assessment rates to cover time spent in small claims court for the 2% of owners that are taken to collections that are not held liable for the late assessments and legal costs they are responsible for.

Owners need to pay their assessments as agreed. Its not the HOA responsibility to chase owners around to get assessments paid. The burden of assessments should not be born to only those that are responsible with their finances while

allowing those that don't pay their bills to shirk responsibility and game the system.

HOAs maintain and protect huge areas of Cities and the State. Our HOA has a value of ~\$1B in property for the 3200 homes. Assessments are critical to ensuring operations and maintenance of these areas is completed and the Community protected over decades as not to become blight in 20-30yrs as the homes age. We have Reserves to be funded and common area real property to be maintained. All the law changes should not make it harder to perform these critical functions and collect fair assessments from owners that benefit from them and want their communities to be maintained and protected.

Thank you

V/R

Ed Schoenheit



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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 tenants 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.