

Senate Finance  
 04/29/2022 Upon Adjournment  
 HB22-1137 HOA Board Accountability & Transparency  
 Typed Text of Testimony Submitted

Name, Position, Representing	Typed Text of Testimony
Douglas Marsh For Self	<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 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.</p> <p>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 homeowners needed protection against abusive conduct. For that reason I ask you to support it.</p>
<p>Jessica Towles Against Hammersmith Management Inc.</p>	<p>URGENT : HB 1137</p> <p>HB 1137 limits the ability of unit owners' associations in collecting unpaid assessments, fees, and fines.</p> <p>This bill negatively impacts key obligations of an association and works against the duties of boards to protect, preserve, and enhance property values in their communities. If enacted, HB 1137 will:</p> <ul style="list-style-type: none"> <li>• Create additional notification and record-keeping requirements for volunteer board members and management companies that are trying to collect delinquent assessments;</li> <li>• Prohibit HOAs from imposing daily fines and provide for time frames to cure violations that are not a "one size fits all" solution.</li> <li>• Force HOAs to terrify owners that they are going to be foreclosed on when trying to collect a typical delinquent assessment;</li> <li>• Require HOAs to offer extended payment plans for owners that are not realistic for higher balances owed (again, this cannot be a "one size fits all" solution) and would negatively impact FHA lending for communities.</li> <li>• Effectively eliminate using fines as a basis for foreclosure, even if the fines are based on an owner's dangerous, threatening, harassing, or antisocial behavior.</li> </ul> <p>This bill is an attack against community associations' rights to protect their neighborhoods and residents from individuals 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 make fair, equitable, and impartial decisions regarding covenant enforcement and fine matters, and it is unacceptable and unreasonable to force associations to choose between ignoring covenant violations (including assessment collection) and raising dues to pay for enforcement. Let the courts decide if the association is reasonable. The proposed law would strip 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. Your assessments will have to go up significantly for you to fulfill your duty to enforce.</p> <p>Sincerely, Jessica Towles, CMCA, AMS, PCAM Vice President</p>

	<p>and President of the Community Associations Institute</p>
<p>Diane Langley Against Self</p>	<p>We are opposed to this bill, thank you.</p>
<p>Kelly Schneweis Against Self</p>	<p>Strongly oppose HB1137 because it limits the ability of the association to collect unpaid assessments which is detrimental and negatively impacts the key obligations of an association and works against the fiduciary duties of the Board to protect, preserve, and enhance property values in their communities. All owners in HOA communities agree to the obligation to pay assessments as written in the Declarations at the time of purchase and failure to pay monetary obligation is unreasonable. To force the association and every owner in the association potentially ignore covenant violations, including assessment collections, is unacceptable.</p>
<p>Edward Schoenheit Against Ridgeview at Stetson Hills Master HOA</p>	<p>Sir or Ma'am</p> <p>Simply, HB22-1137 passes costs for delinquent homeowner assessments onto other homeowners.</p> <p>This bill creates unintended negative impacts to large HOAs with low assessment rates (\$200/yr) and makes collections near impossible.</p> <p>This bill conflicts directly with HB22-1387 (HOA Reserve Funding) That bill requires HOAs to fund Reserves in higher amounts which is good but then 22-1137 makes it hard for HOAs to collect those assessments. This is simply obtuse.</p> <p>This bill gives preferential treatment to Metro/PID HOA over traditional HOAs in collecting assessments. Traditional true HOAs can't collect assessment via taxes.</p> <p>The Bill requires HOAs and Mngt Co. to contact owners in a variety of ways but makes no requirement of owner to provide contact information. This removes personal responsibility. Having HOAs or Board members post notices on owners' door is dangerous and intrusive.</p>

	<p>The Bill sponsors have abjectly refused to accept and incorporate critical stakeholder feedback which is directly opposed to good governance. As a 25yr veteran I am appalled this is how the CO Assembly functions and how little attention is paid to details in these bills.</p> <p>I am property owner; unpaid HOA Board member and I can clearly see the errors in HB22-1137 that the sponsors don't understand or are choosing to ignore. There are things that I do support in the bill but there are several critical errors in the bill that need to be fixed before the destroy the sustainability of HOAs in the long term.</p> <p>V/R</p>
<p>Virginia Gillispie For Self</p>	<p>To the Members of the Colorado Senate Finance Committee,</p> <p>Please vote in favor of sending this legislation to the full senate. Curbing the imbalance of power between HOA members and corporate entities including the executive board (as representatives of the 'Association,'), HOA attorneys and other industry representatives is long overdue. As an HOA member myself and former board member, I learned how unit owners have little to no recourse but to "vote the board out," while the executive board and industry representatives enjoy all the protections and powers of the corporation granted them under state law--along with the related spoils. This bill would be a step in the right direction, although additional regulatory oversight is sorely needed. Thank you.</p>



825 Austin Bluffs Pkwy Ste 201  
Colorado Springs CO 80918-7800

**E-Mail**

[team@teamstrategy.org](mailto:team@teamstrategy.org)

**Website**

<https://teamstrategy.org>

**Mailing Address**

Team Strategy Inc.  
PO Box 26330

Colorado Springs CO 80936-6330

**Office Phone:**

(719) 594-4003

**Emergency Phone:**

(719) 339-4479

**Community Association Manager**

**Colorado Registered Investment  
Advisors  
CRD #113469**

**Colorado Registered Investment  
Advisor Representatives  
CRD #4416739**



April 29, 2022

Senate Finance Committee  
Colorado General Assembly  
200 E Colfax Ave  
Denver CO 80203

RE: House Bill 22-1137

Dear Members of the Committee,

As someone who has:

- 1) Lived in a Homeowners Association (HOA) since 1992.
- 2) Served on the Board of Directors of a Homeowners Association (1995-2008).
- 3) Is a member of the Community Associations Institute (CAI) (1995-Present).
- 4) Served on the Colorado Legislative Affairs Committee (CLAC) of the Community Associations Institute (2001-2003).
- 5) As a Board Member in "Good Standing" (Treasurer), was UNSUCCESSFULLY sued by his own homeowners' association (2005).
- 6) Assisted homeowner associations in litigation arising with other adjoining associations.
- 7) Successfully "GRIEVED" an HOA Attorney with the Colorado Attorney Regulation Counsel (ARC).
- 8) Appointed by the Attorney Regulation Counsel (ARC) to supervise a Colorado attorney for an 18-month probationary period.
- 9) Recognized by the El Paso County District Court as an EXPERT WITNESS in Homeowner Association Management.
- 10) Owns a Community Association Management (CAM) company and has done so since 2007.
- 11) Represented individual homeowners against their HOA Board of Directors and Legal Counsel in relation to Fines, Fees, and Covenant Enforcement matters over the years.
- 12) Served as a Lay Witness on behalf of individual homeowners against their HOA's in Small Claims and El Paso County Court.

As such, I FULLY SUPPORT the ability of homeowner associations to enforce the Declarations and Covenants at the Small Claims level without MANDATORY LEGAL COUNSEL. Pursuant to the Colorado Commercial Code any individual may file an action in Small Claims Court (for amounts less than \$7,500.00) without legal counsel present.

I presently manage a 150-unit Residential Community in Eastern El Paso County that requires the owners to pay QUARTERLY ASSESSMENTS at the rate of \$50.00 per quarter. Upon acquiring management responsibility of The Metropolitan Club Homeowners Association (Metropolitan Club Subdivision) in Woodmen Hills, a COLLECTION POLICY was initiated that required homeowners who were six (6) months in arrears were to be turned over to legal counsel for collections. With a \$25.00 Late Fee, and a 1.5% interest penalty (18%) per annum. The total debt amounted to slightly over \$318.00.

However, once taken to Small Claims Court the attorney charged \$1500.00 to \$2500.00 for the matter. Individual homeowners were being forced into foreclosure and bankruptcy for miniscule amounts of Fines, Fees, etc. The purpose of the association is to ENFORCE THE COVENANTS, and to do so in a manner that is REASONABLE. To date, the number of delinquencies amount to less than 10% and the total owed is less than \$7,000.00 with ZERO FORECLOSURES and ZERO BANKRUPTCIES. Vastly different from the previous \$28,000.00. Late Fees and Interest Penalties should be used as an INCENTIVE to ENFORCE COMPLIANCE, not to FORCE HOMEOWNERS OUT OF THEIR HOMES. **(PROPERTY and DUE PROCESS RIGHTS)**

One of the mechanisms available to the association is the ability to: a) Enter into a Payment/Repayment Agreement to bring their account up to a CURRENT STATUS, b) Allow the association the ability to RESCIND VOTING RIGHTS for any delinquent accounts, c) Issue an ASSESSMENT LIEN for any OUTSTANDING BALANCES in order to protect the associations interests and to collect said funds prior to any sale of real property, and d) WAIVE LATE FEES and INTEREST PENALTIES as part of the Collection Process. All which SHOULD BE FULLY UTILIZED prior to seeking any legal action.

There are issues currently contained in the present legislation that raises issues like those found in Senate Bill 22-0059. I will address these specifically.

**INTERESTED PARTIES:** Pursuant to Abril Meadows v. Castro 211 P. 3d 64 real property ownership in Colorado is recognized by the name(s) appearing on one form - the DEED. (Colorado Statute of Frauds) That said, the APPOINTMENT of a DESIGNATED CONTACT raises a genuine issue. The courts only recognize an Executor, a Trustee, a Corporate Officer, a Conservator, etc. as those individuals who may act on behalf of a property owner. That said, what LEGAL STANDING would a DESIGNATED CONTACT have and what level of authority would they function?

**“A UNIT OWNER MAY IDENTIFY ANOTHER PERSON TO SERVE AS A DESIGNATED CONTACT FOR THE UNIT OWNER TO BE CONTACTED ON THE UNIT OWNER’S BEHALF FOR PURPOSES OF THIS SUBSECTION.”**

**LANGUAGE PRIVILEGE:** If a homeowner purchased a home and FAILED TO ASSERT A LANGUAGE PRIVILEGE during the Buy and Sell Transaction and/or closing they should not be able to ASSERT THE LANGUAGE PRIVILEGE as an AFFIRMATIVE DEFENSE against any COLLECTION ACTIVITIES. The mere fact that a property owner was able to WAIVE THEIR ENGLISH LANGUAGE requirement during the purchase process is an indication that they UNDERSTOOD that 1) a homeowner’s association was present, and 2) there are financial obligations relative to the purchase.

**“A UNIT OWNER MAY ALSO NOTIFY THE ASSOCIATION IF THE UNIT OWNER PREFERS THAT CORRESPONDENCE AND NOTICES BE MADE IN A LANGUAGE OTHER THAN ENGLISH....”**

If a property owner ASSERTS THIS PRIVILEGE, is it the responsibility of the association to pay for a language interpreter or transcriptionist? What about the requirement of interpreter or language transcription in a legal proceeding? If the respondent fails, may the association recover these costs as well?

**BOARD of DIRECTOR/REFERAL of DELINQUENT ACCOUNTS;**

- 1) What if there is not a Board of Directors present within the community?
- 2) What if the association fails to conduct an ANNUAL MEETING pursuant to Title 7 of the Colorado Business and Corporation Act, does it negate a manager from enforcing the Declarations and Covenants?
- 3) How does the MANDATORY HEARING requirement apply to Commercial Associations that fall under the LIMITED REQUIREMENTS of the Colorado Common Interest Ownership Act (CCIOA) 38-33.3-308 (4)(e)?
- 4) How does one go about obtaining a RECORDED VOTE if a Board of Directors IS NOT PRESENT?

**“A COMMUNITY ASSOCIATION MANAGEMENT OR PROPERTY MANAGEMENT COMPANY ACTING ON BEHALF OF THE ASSOCIATION SHALL NOT REFER A DELINQUENT ACCOUNT TO A COLLECTION AGENCY OR AN ATTORNEY UNLESS A MAJORITY OF THE EXECUTIVE BOARD VOTES TO REFER THE MATTER IN A RECORDED VOTE AT A MEETING CONDUCTED PURSUANT TO SECTION 38-33.3-308 (4)(e).”**

**COLLECTIONS:** Does the above language apply to property managers, real estate companies, accounting, and bookkeeping companies, etc. that manage associations throughout Colorado? If these entities are ENFORCING the Declarations and Covenants and PROPERLY NOTIFY a debtor in accordance with the Colorado Commercial Code, the Colorado Fair Debt Collection Protection Act, and/or the Federal Fair Debt Collection Protection Act would the above apply?

**IN CONCLUSION,** I do not believe that FINES associated with COMMON AREA ELEMENT VIOLATIONS should be COMINGLED with ASSESSMENT COLLECTION ACTIONS. These are TWO SEPARATE ISSUES. Suffice it to say that either matter should grant to ANY ASSOCIATION the ability to ENFORCE PAYMENT via the DUE PROCESS afforded by the Colorado Small Claims Courts.

Best Regards,



David C. Stiver BA MA CAM  
Colorado Registered Investment Advisor #113469  
Community Association Manager

## Testimony Supporting HB 22 -1137: Senate Finance Committee

Honorable Senators,

Thank you so much for taking the time to consider supporting **HB22-1137 HOA Transparency and Accountability**. My name is Sandra Davis. I live in a Westminster HOA and submit my testimony today in favor of this Bill to help level the playing field for homeowners now hampered from resolving issues simply and affordably within their community by the law firms and their clients who benefit from the current lack of regulation. As noted in previous testimony, this lack of regulation can lead to a predatory climate where HOA Boards and their attorneys actually profit from unlimited fines, high interest rates, and unlimited legal fees.

After the DORA program to regulate the HOA management companies and their agents was vetoed by the Governor, we have been in a completely unregulated environment. This environment has allowed HOA Boards and others to exploit homeowners through the abusive use of HOA powers to impose unlimited fees, fines, and interest rates for covenant infractions. As the April 3, 2022 Denver Post article reveals, predatory HOAs are currently able to foreclose on HOA properties for even minor infractions, without proper notification. These homeowners, who have never missed a mortgage payment or monthly assessment, can lose all the equity in their home to an HOA foreclosure at a Sheriff's auction where it can be sold to insiders for less than fair market value.

Opposition to this Bill likely will characterize it as undermining an Association's ability to fine members to enforce community covenants. This is a red herring. Homeowners only seek to defend their rights in Small Claims court, not challenge them. This venue, in no way, undermines the ability of HOAs to properly regulate their members according to the governing documents. Instead, it provides an alternative to costly litigation by allowing them to air their concerns directly before a judge. To their credit, the Colorado Judicial Branch has self-help instructions on their website, as well as the necessary forms for those wishing to file suit and represent themselves. There is even an option for mediation, a service available from the Colorado Office for Dispute Resolution to help everyone negotiate a mutually acceptable agreement. Even the Colorado Bar Association endorses this approach.

To be most effective, the Bill's text should allow the Small Claims venue to be expanded beyond monetary recovery to include other disputes. If an HOA has violated State HOA law and its governing documents by withholding financial documents from their homeowners, for example, they can pay a minimal fee to present the case, themselves, to incentivize the HOA's compliance. This method of dispute resolution is simple and more cost effective than the current system where homeowners must take a case to a County or District Court, and likely hire a lawyer, to get a hearing.

Thank you for time and consideration. Please vote YES on HB22-1131.

Sincerely,

Sandra Davis

