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An Act

HOUSE BILL 13-1276

BY REPRESENTATIVE(S) Williams, Buckner, Court, Dore, Exum, Ferrandino, Fields, Gardner, Hullinghorst, Labuda, Lebsock, McCann, Melton, Moreno, Murray, Navarro, Pabon, Peniston, Primavera, Rosenthal, Ryden, Salazar, Schafer, Scott, Singer, Szabo, Tyler, Fischer, Lee, May; also SENATOR(S) Carroll and Balmer, Jahn, Kefalas, Kerr, Newell, Nicholson, Schwartz, Todd.

CONCERNING LIMITATIONS ON THE ACTIONS A UNIT OWNERS' ASSOCIATION UNDER THE "COLORADO COMMON INTEREST OWNERSHIP ACT" MAY TAKE AGAINST A UNIT OWNER WITH RESPECT TO THE COLLECTION OF DEBT OWED TO THE UNIT OWNERS' ASSOCIATION.

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

SECTION 1. In Colorado Revised Statutes, 38-33.3-209.5, **add** (5) as follows:

38-33.3-209.5. Responsible governance policies - due process for imposition of fines - procedure for collection of delinquent accounts - definition. (5) NOTWITHSTANDING ANY PROVISION OF THE DECLARATION, BYLAWS, ARTICLES, OR RULES AND REGULATIONS TO THE CONTRARY OR THE ABSENCE OF A RELEVANT PROVISION IN THE DECLARATION, BYLAWS, ARTICLES, OR RULES OR REGULATIONS, THE ASSOCIATION OR A HOLDER OR

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ASSIGNEE OF THE ASSOCIATION'S DEBT, WHETHER THE HOLDER OR ASSIGNEE OF THE ASSOCIATION'S DEBT IS AN ENTITY OR A NATURAL PERSON, MAY NOT USE A COLLECTION AGENCY OR TAKE LEGAL ACTION TO COLLECT UNPAID ASSESSMENTS UNLESS THE ASSOCIATION OR A HOLDER OR ASSIGNEE OF THE ASSOCIATION'S DEBT HAS ADOPTED, AND FOLLOWS, A WRITTEN POLICY GOVERNING THE COLLECTION OF UNPAID ASSESSMENTS. THE POLICY MUST, AT A MINIMUM, SPECIFY:

(a) THE DATE ON WHICH ASSESSMENTS MUST BE PAID TO THE ENTITY AND WHEN AN ASSESSMENT IS CONSIDERED PAST DUE AND DELINQUENT;

(b) ANY LATE FEES AND INTEREST THE ENTITY IS ENTITLED TO IMPOSE ON A DELINQUENT UNIT OWNER'S ACCOUNT;

(c) ANY RETURNED-CHECK CHARGES THE ENTITY IS ENTITLED TO IMPOSE;

(d) THE CIRCUMSTANCES UNDER WHICH A UNIT OWNER IS ENTITLED TO ENTER INTO A PAYMENT PLAN WITH THE ENTITY PURSUANT TO SECTION 38-33.3-316.3 AND THE MINIMUM TERMS OF THE PAYMENT PLAN MANDATED BY THAT SECTION;

(e) THAT, BEFORE THE ENTITY TURNS OVER A DELINQUENT ACCOUNT OF A UNIT OWNER TO A COLLECTION AGENCY OR REFERS IT TO AN ATTORNEY FOR LEGAL ACTION, THE ENTITY MUST SEND THE UNIT OWNER A NOTICE OF DELINQUENCY SPECIFYING:

(I) THE TOTAL AMOUNT DUE, WITH AN ACCOUNTING OF HOW THE TOTAL WAS DETERMINED;

(II) WHETHER THE OPPORTUNITY TO ENTER INTO A PAYMENT PLAN EXISTS PURSUANT TO SECTION 38-33.3-316.3 AND INSTRUCTIONS FOR CONTACTING THE ENTITY TO ENTER INTO SUCH A PAYMENT PLAN;

(III) THE NAME AND CONTACT INFORMATION FOR THE INDIVIDUAL THE UNIT OWNER MAY CONTACT TO REQUEST A COPY OF THE UNIT OWNER'S LEDGER IN ORDER TO VERIFY THE AMOUNT OF THE DEBT; AND

(IV) THAT ACTION IS REQUIRED TO CURE THE DELINQUENCY AND THAT FAILURE TO DO SO WITHIN THIRTY DAYS MAY RESULT IN THE UNIT

OWNER'S DELINQUENT ACCOUNT BEING TURNED OVER TO A COLLECTION AGENCY, A LAWSUIT BEING FILED AGAINST THE OWNER, THE FILING AND FORECLOSURE OF A LIEN AGAINST THE UNIT OWNER'S PROPERTY, OR OTHER REMEDIES AVAILABLE UNDER COLORADO LAW;

(f) THE METHOD BY WHICH PAYMENTS MAY BE APPLIED ON THE DELINQUENT ACCOUNT OF A UNIT OWNER;

(g) THE LEGAL REMEDIES AVAILABLE TO THE ENTITY TO COLLECT ON A UNIT OWNER'S DELINQUENT ACCOUNT PURSUANT TO THE GOVERNING DOCUMENTS OF THE ENTITY AND COLORADO LAW; AND

(h) AS USED IN THIS SUBSECTION (5), "ENTITY" MEANS AN ASSOCIATION OR A HOLDER OR ASSIGNEE OF THE ASSOCIATION'S DEBT, WHETHER THE HOLDER OR ASSIGNEE OF THE ASSOCIATION'S DEBT IS AN ENTITY OR A NATURAL PERSON.

SECTION 2. In Colorado Revised Statutes, 38-33.3-316, **amend** (11) (a) and (11) (b) as follows:

38-33.3-316. Lien for assessments. (11) The association's lien may be foreclosed by any of the following means:

(a) In a condominium or planned community, the association's lien may be foreclosed in like manner as a mortgage on real estate; EXCEPT THAT THE ASSOCIATION OR A HOLDER OR ASSIGNEE OF THE ASSOCIATION'S LIEN, WHETHER THE HOLDER OR ASSIGNEE OF THE ASSOCIATION'S LIEN IS AN ENTITY OR A NATURAL PERSON, MAY ONLY FORECLOSE ON THE LIEN IF:

(I) THE BALANCE OF THE ASSESSMENTS AND CHARGES SECURED BY ITS LIEN, AS DEFINED IN SUBSECTION (2) OF THIS SECTION, EQUALS OR EXCEEDS SIX MONTHS OF COMMON EXPENSE ASSESSMENTS BASED ON A PERIODIC BUDGET ADOPTED BY THE ASSOCIATION; AND

(II) THE EXECUTIVE BOARD HAS FORMALLY RESOLVED, BY A RECORDED VOTE, TO AUTHORIZE THE FILING OF A LEGAL ACTION AGAINST THE SPECIFIC UNIT ON AN INDIVIDUAL BASIS. THE BOARD MAY NOT DELEGATE ITS DUTY TO ACT UNDER THIS SUBPARAGRAPH (II) TO ANY ATTORNEY, INSURER, MANAGER, OR OTHER PERSON, AND ANY LEGAL ACTION FILED WITHOUT EVIDENCE OF THE RECORDED VOTE AUTHORIZING THE

ACTION MUST BE DISMISSED. NO ATTORNEY FEES, COURT COSTS, OR OTHER CHARGES INCURRED BY THE ASSOCIATION OR A HOLDER OR ASSIGNEE OF THE ASSOCIATION'S LIEN IN CONNECTION WITH AN ACTION THAT IS DISMISSED FOR THIS REASON MAY BE ASSESSED AGAINST THE UNIT OWNER.

(b) In a cooperative whose unit owners' interests in the units are real estate as determined in accordance with the provisions of section 38-33.3-105, the association's lien must be foreclosed in like manner as a mortgage on real estate; EXCEPT THAT THE ASSOCIATION OR A HOLDER OR ASSIGNEE OF THE ASSOCIATION'S LIEN, WHETHER THE HOLDER OR ASSIGNEE OF THE ASSOCIATION'S LIEN IS AN ENTITY OR A NATURAL PERSON, MAY ONLY FORECLOSE ON THE LIEN IF:

(I) THE BALANCE OF THE ASSESSMENTS AND CHARGES SECURED BY ITS LIEN, AS DEFINED IN SUBSECTION (2) OF THIS SECTION, EQUALS OR EXCEEDS SIX MONTHS OF COMMON EXPENSE ASSESSMENTS BASED ON A PERIODIC BUDGET ADOPTED BY THE ASSOCIATION; AND

(II) THE EXECUTIVE BOARD HAS FORMALLY RESOLVED, BY A RECORDED VOTE, TO AUTHORIZE THE FILING OF A LEGAL ACTION AGAINST THE SPECIFIC UNIT ON AN INDIVIDUAL BASIS. THE BOARD MAY NOT DELEGATE ITS DUTY TO ACT UNDER THIS SUBPARAGRAPH (II) TO ANY ATTORNEY, INSURER, MANAGER, OR OTHER PERSON, AND ANY LEGAL ACTION FILED WITHOUT EVIDENCE OF THE RECORDED VOTE AUTHORIZING THE ACTION MUST BE DISMISSED. NO ATTORNEY FEES, COURT COSTS, OR OTHER CHARGES INCURRED BY THE ASSOCIATION OR A HOLDER OR ASSIGNEE OF THE ASSOCIATION'S LIEN IN CONNECTION WITH AN ACTION THAT IS DISMISSED FOR THIS REASON MAY BE ASSESSED AGAINST THE UNIT OWNER.

SECTION 3. In Colorado Revised Statutes, **add** 38-33.3-316.3 as follows:

38-33.3-316.3. Collections - limitations. (1) IN COLLECTING PAST-DUE ASSESSMENTS AND OTHER DELINQUENT PAYMENTS UNDER THIS ARTICLE, AN ASSOCIATION OR A HOLDER OR ASSIGNEE OF THE ASSOCIATION'S DEBT, WHETHER THE HOLDER OR ASSIGNEE OF THE ASSOCIATION'S DEBT IS AN ENTITY OR A NATURAL PERSON, SHALL:

(a) ADOPT AND COMPLY WITH A COLLECTIONS POLICY THAT MEETS THE REQUIREMENTS OF SECTION 38-33.3-209.5 (5); AND

(b) MAKE A GOOD-FAITH EFFORT TO COORDINATE WITH THE UNIT OWNER TO SET UP A PAYMENT PLAN THAT MEETS THE REQUIREMENTS OF THIS SECTION; EXCEPT THAT:

(I) THIS SECTION DOES NOT APPLY IF THE UNIT OWNER DOES NOT OCCUPY THE UNIT AND HAS ACQUIRED THE PROPERTY AS A RESULT OF:

(A) A DEFAULT OF A SECURITY INTEREST ENCUMBERING THE UNIT;
OR

(B) FORECLOSURE OF THE ASSOCIATION'S LIEN; AND

(II) THE ASSOCIATION OR A HOLDER OR ASSIGNEE OF THE ASSOCIATION'S DEBT IS NOT OBLIGATED TO NEGOTIATE A PAYMENT PLAN WITH A UNIT OWNER WHO HAS PREVIOUSLY ENTERED INTO A PAYMENT PLAN UNDER THIS SECTION.

(2) A PAYMENT PLAN NEGOTIATED BETWEEN THE ASSOCIATION OR A HOLDER OR ASSIGNEE OF THE ASSOCIATION'S DEBT, WHETHER THE HOLDER OR ASSIGNEE OF THE ASSOCIATION'S DEBT IS AN ENTITY OR A NATURAL PERSON, AND THE UNIT OWNER PURSUANT TO THIS SECTION MUST PERMIT THE UNIT OWNER TO PAY OFF THE DEFICIENCY IN EQUAL INSTALLMENTS OVER A PERIOD OF AT LEAST SIX MONTHS. NOTHING IN THIS SECTION PROHIBITS AN ASSOCIATION OR A HOLDER OR ASSIGNEE OF THE ASSOCIATION'S DEBT FROM PURSUING LEGAL ACTION AGAINST A UNIT OWNER IF THE UNIT OWNER FAILS TO COMPLY WITH THE TERMS OF HIS OR HER PAYMENT PLAN. A UNIT OWNER'S FAILURE TO REMIT PAYMENT OF AN AGREED-UPON INSTALLMENT, OR TO REMAIN CURRENT WITH REGULAR ASSESSMENTS AS THEY COME DUE DURING THE SIX-MONTH PERIOD, CONSTITUTES A FAILURE TO COMPLY WITH THE TERMS OF HIS OR HER PAYMENT PLAN.

(3) FOR PURPOSES OF THIS SECTION, "ASSESSMENTS" INCLUDES REGULAR AND SPECIAL ASSESSMENTS AND ANY ASSOCIATED FEES, CHARGES, LATE CHARGES, ATTORNEY FEES, FINES, AND INTEREST CHARGED PURSUANT TO SECTION 38-33.3-315 (2).

SECTION 4. In Colorado Revised Statutes, 38-33.3-117, **amend** (1) introductory portion; and **add** (1) (k.5) as follows:

38-33.3-117. Applicability to preexisting common interest communities. (1) Except as provided in section 38-33.3-119, the following sections shall apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after July 1, 1992:

(k.5) 38-33.3-316.3; AND

SECTION 5. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2014; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to debt collection practices, payment plans, and

foreclosure proceedings commenced on or after the applicable effective date of this act.

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

John P. Morse
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO