



## HOA and Your Obligations as a Member

### What is a Homeowners Association?

A Homeowners Association (HOA) is an organization responsible for enforcing the bylaws, declarations, and policies (or covenants) of an association as approved by its Board and agreed to by its members. HOAs have a duty to act with good faith and trust (fiduciary duty) to the membership of the association to enforce contracted covenants and rules of the neighborhood. Typically, all homeowners within a specified area or neighborhood are HOA “members”. There should be disclosure at time of purchase that the property is subject to covenants and rules of an HOA.

*The HOA refers to governing bodies of a Homeowners Association, usually a Board of Directors, Manager, and Committees, responsible for enforcing covenants and collection of payments. As a member of the HOA, you, will be referred to as a “homeowner” or “member” below.*

### What does the HOA do?

The HOA is responsible for enforcing the association’s covenants. Depending on the specific HOA and its community’s needs, the HOA usually provides maintenance and upkeep of common areas such as green spaces, tennis courts, swimming pools, etc. The HOA must gain committee approval for proposed projects regarding construction, exterior aesthetics (the appearance of landscaping etc.) and other rules and regulations. Despite the fact HOAs may provide different services or use different bylaws, all HOAs are subject to the Colorado Common Interest Ownership Act (CCIOA). This act provides rules HOAs must follow while interacting with members. The CCIOA protects HOA members and provides regulations about the collection of assessments and fines. It provides protections preventing arbitrary (random) rules and regulations.

### What are my obligations as a HOA homeowner/member?

The most common duty for HOA member to pay assessments or fees. Assessments are monthly, quarterly, or annual fees paid to the HOA to create its budget. Part of the fee is designated to pay for current operations, such as landscaping, snow removal, pool maintenance, insurance and water. Part of the fee is put into a reserve designated for long-term repairs and replacements in the community. Repairs could include a new roof for the community center or road repairs. All fees are put toward maintaining the community as a whole.

HOA members might be responsible for paying special assessments or fees. These fees, separate from the monthly assessments, are used to fund neighborhood public projects, such as major roadwork or utility line maintenance. These fees can be costly depending on the project. An HOA may require a homeowner to pay a special assessment in a lump sum, in monthly payments, or a combination of both.

HOA members are responsible for following community covenants (rules). HOA's typically have a set of rules specifying what a homeowner can and can't do with their property. These rules regulate both use and construction and address a wide variety of issues such as the exterior color of a home or whether a HOA member is allowed to run a business from their residence. Failure to follow these rules generally results in a fine.

### **When can the HOA fine me?**

The HOA must do the following:

- Have a written policy governing (defining) instances in which fines will be assessed
- Allow for a fair and impartial fact-finding process investigating whether an alleged violation actually happened and whether the homeowner is the person responsible for the violation
- In the event the homeowner disagrees with the fine, inform the homeowner in writing of their right to request an informal hearing with an impartial decision maker
- Any investigation may be informal, but it **MUST** allow for the homeowner to be heard by an impartial decision maker
  - An impartial decision maker is a person who should NOT have a direct, personal, or financial interest in the outcome, and should not receive any greater benefit or detriment (damage) from the outcome than any other general member of the association

Important! As a result of any investigation, if you as the homeowner are not held responsible for an alleged violation, you are NOT responsible for any costs brought upon by the association in hearing the claim or conducting the investigation.

### **What happens if I don't pay my HOA fees?**

The HOA could:

- Charge you late fees
  - If you continue not to pay the HOA could charge interest on the HOA fee
- File a lawsuit to collect amounts due
- Record an assessment lien on the property, which could allow the HOA to foreclose on the property and collect any amounts due through the sale of the property

Important! Don't withhold payment because you believe the HOA has not completed its duties, for example maintaining the condition of the common areas. This is NOT a valid reason to withhold payment.

### **I was found delinquent (late) on a payment. What do I do?**

- Request a copy of your account ledger to see how the amount due came to be
  - Many HOA's will include a ledger with the Notice of Delinquency
- Pay the amount due to bring the account current once you have established the fees are owed

If payment in full is not feasible:

- Ask to enter a payment plan with the HOA as provided for under Colorado law
  - Colorado Revised Statute 38-33.3-316.3 requires an HOA to engage in good faith efforts to reach an agreement for a payment plan consisting of equal installments for a duration of at least 6 months

### **What must be included in a Notice of Delinquency?**

Under Colorado law, the HOA must send a homeowner a Notice of Delinquency.

The Notice must include:

- The amount owed and how it was accounted for
- Whether a payment plan is available
- Instructions for entering into a payment plan (if available)

- Instructions for how a homeowner can get a copy of his/her accounts ledger
- The action required to cure delinquency (resolve the issue), and
- The possible repercussions or consequences if the account is not rectified or paid

### **What are my rights when the HOA is trying to collect money?**

The HOA may not use a collection agency or take legal action to collect unpaid assessments unless it follows a written policy governing the collection of unpaid fees

The written policy MUST include:

- The date HOA assessments must be paid
- When payments are considered past due and delinquent
- Any late fees and interest the HOA can charge on a delinquent account
- Any returned-check charges the HOA can charge
- Circumstances under which the homeowner can enter into a payment plan with the HOA
- A plan of Notice the HOA must provide to the homeowner before turning any debt over to a collection agency or taking legal action

The Notice must include:

- Total amount due and explanation of how the total was determined
- Whether a payment plan option is available
- Contact information the homeowner may use to request a copy of the unit owner's ledger to verify the amount of the debt, and
- Actions required on behalf of the homeowner to cure the delinquency or resolve the payment issue

Failure to resolve the payment issue in 30 days may result in the following:

- The delinquent account is turned over to a collection agency
- A lawsuit is filed
- An assessment lien, and/or action for foreclosure

### **I believe the amount owed is incorrect. What do I do?**

If you believe the HOA has assessed the wrong amount to your account, you could consider taking these actions:

- Request a ledger to see where and how the amount owed was supposedly created

- Pay the amount they say you owe, then mark your payment as being “Under Protest” and file a lawsuit seeking to recover the excess funds
- Refuse to pay the amount and file a lawsuit seeking a Declaratory Judgment (a Judgment that decides on rights of the parties involved)

### **How might a collection action be invalid or improper?**

In some instances, an HOA will attempt to collect outstanding fees in a way that’s improper under the Colorado Common Interest Ownership Act (CCIOA).

Some examples of improper collection include when the HOA did not:

- Provide Notice of Delinquency before filing the collection action
- Offer or engage in a good-faith effort to enter a payment plan
- Provide the required Notice of an alleged covenant violation
- Afford the homeowner a chance to be heard by an impartial decision maker for an alleged covenant violation before filing a collection action
- Provide an impartial decision maker to hear the homeowner’s challenge of an alleged covenant violation
- Act in Good Faith (a sincere intention to deal fairly with others)

Important! Failure to pay an assessment that is owed because the HOA failed to comply with its duties (such as maintenance of common areas) is **NOT** a legal defense.

Visit **The HOA Information and Resource Center**

**(<https://www.colorado.gov/pacific/dora/hoa-information-and-resource-center>)** for additional information about Homeowners Associations in Colorado.

Was this resource useful? **Click here (<https://www.surveymonkey.com/r/7LDMNSX>)** and let us know - thanks.

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