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### Colorado HOA Foreclosures

If you fail to pay your HOA assessments in Colorado, the association can most likely get a lien on your property and might foreclose on your home.

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When you buy a single-family home, townhome, or condominium that's part of a planned community with covenants, you'll most likely pay [fees and assessments](#), often collectively called "assessments," to a homeowners' association (HOA). If you fall behind in the assessments, the association will likely first [try to collect](#) the debt using traditional methods. For instance, the HOA will probably call you and send letters. But if those tactics don't get you to pay up, the association will probably try other ways to collect from you. The HOA might take away your privileges to use the common facilities or file a lawsuit to get a [money judgment](#) against you. Most HOAs also have the power to get a [lien on your property](#) if you become delinquent in assessments. Not only will an assessments lien cloud the title to the property, which hinders your ability to sell or refinance the home, but the property can also be [foreclosed](#) to force a sale to a new owner—even if the property [has a mortgage](#) on it.

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In Colorado, if your home is part of an HOA and you fall behind in assessments:

- The HOA usually can get a lien on your home if you become delinquent in paying the assessments.
- The HOA can charge you for assessments, late charges, collection costs, attorneys' fees and costs, fines, interest, and some other charges.
- If you request it, the association must provide you with a statement setting forth the amount of past-due assessments.
- After you default on the assessments, the HOA may foreclose, but only if the total amount secured by the lien is equal to six months or more of common expense assessments and the HOA gets board approval.
- [Lien priority](#) determines what happens to [other liens](#), like a mortgage lien, if an HOA lien is foreclosed.
- Also, Colorado has laws that provide protections regarding debt collection practices and landscaping, among other things, for residents who are part of an HOA.

If the HOA initiates a foreclosure, you might have a [defense to the action](#), or you might be able to [negotiate a way to get caught up on the overdue amounts](#) and save your home.

### Colorado HOA Laws

In Colorado, the Colorado Common Interest Ownership Act (CCIOA) (Colo. Rev. Stat. § 38-33.3-101 through § 38-33.3-319) covers condominiums, co-operatives, and planned communities, including condominiums created after July 1, 1992. (C.R.S. § 38-33.3-115, C.R.S. § 38-33.3-103). But § 38-33.3-316 of the CCIOA applies to all condominiums and an organization created before July 1, 1992, may elect to have the development subject to the CCIOA (C.R.S. § 38-33.3-117, C.R.S. § 38-33.3-118). The CCIOA modified the state's older Colorado Condominium Ownership Act (CCOA) (Colo. Rev. Stat. § 38-33-101 through § 38-33-113) and superseded most of the CCOA for communities created under the CCIOA. For new condominiums, only parts of the CCOA remain in effect, most of which relate to [timeshares](#). This article focuses on the CCIOA.

Also, HOAs are often incorporated as nonprofit corporations and are subject to the Colorado Revised Nonprofit Corporation Act. (C.R.S. § 7-121-101 and following).

### **How HOA Liens Work, Generally**

Based on the association's [Declaration of Covenants, Conditions, and Restrictions \(CC&Rs\)](#) and state law, an HOA can usually get a lien on a property if the homeowner is delinquent in paying the assessments. Once a homeowner becomes delinquent on the assessments, a lien will usually automatically attach to the home. In some cases, the association will record its lien with the county recorder to provide public notice that the lien exists, regardless of whether state law requires recording.

### **HOA Liens in Colorado**

In Colorado, the recording of the Declaration of CC&Rs or the "declaration" constitutes record notice and perfection of the lien. No further recording of the claim of lien for assessments is required. (Colo. Rev. Stat. § 38-33.3-316(4)).

### **Look Out for Legal Changes**

In this article, you'll find details on laws covering HOA laws in Colorado, with citations to statutes so you can learn more. Statutes change, so [checking them](#) is always a good idea. How courts and agencies interpret and apply the law can also change. And some rules can even vary within a state. These are just some of the reasons to consider consulting an attorney.

### **Charges the HOA May Include in the Lien**

Colorado law sets out the types of charges that the HOA may include in an assessments lien. (Colo. Rev. Stat. § 38-33.3-316(1)). Unless the declaration provides otherwise, the association may include charges for:

- **Assessments.** Of course, the HOA can include amounts for unpaid assessments in the lien.
- **Late charges.** Charges for the late payment of assessments may be included in the assessments lien as well.
- **Reasonable attorneys' fees and costs.** The HOA may also include reasonable attorneys' fees and costs incurred in the total lien amount. (Colo. Rev. Stat. § 38-33.3-316(7)).
- **Fines.** The association may include fines for violations of the declaration, bylaws, or rules and regulations of the association. But the HOA may not fine any owner for an alleged violation

unless the association has a written policy governing the imposition of fines that includes a fair and impartial fact-finding process concerning whether the violation occurred and whether the owner is the one who should be held responsible for the violation. (Colo. Rev. Stat. § 38-33.3-209.5(2)(b)(I)).

- **Interest.** The HOA may also include interest on the past-due common expense assessments at the rate set by the association, but not exceeding 21% per year. (Colo. Rev. Stat. § 38-33.3-315(2)).
- **Other charges.** The association may also impose certain other charges, like charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments. (C.R.S. § 38-33.3-302(I)).

### **Colorado Law Requires HOAs to Establish a Consistent Debt Collection Policy**

Colorado law requires most HOAs to adopt a policy governing the collection of unpaid assessments. (Colo. Rev. Stat. § 38-33.3-209.5).

### **How to Get a Statement of Assessments Due**

If you make a written request, the association must provide you with a statement of the assessments due. If the HOA fails to furnish a statement, it can't assert a lien for the unpaid assessments that were due as of the date of the request. (Colo. Rev. Stat. § 38-33.3-316(8)).

### **HOAs Must Give Written Notice Regarding Delinquent Accounts Before Taking Legal Action**

Before the HOA can turn a delinquent account over to an attorney for legal action or [collections agency](#), the HOA must provide a notice to the homeowner specifying, among other things, the total amount due, including an accounting of how the total was determined and whether the opportunity to enter into a payment plan exists. (Colo. Rev. Stat. § 38-33.3-209.5).

### **HOAs Must Offer Payment Payment Plans**

The HOA or assignee of the association's debt, like a debt collector, must make a good-faith effort to coordinate with a delinquent homeowner to set up a payment plan to pay off past-due assessments and other delinquent payments. The homeowner may pay off the delinquency by making equal installments over a period of at least six months. But an HOA doesn't have to offer a payment plan to a unit owner who has previously entered into a plan. (Colo. Rev. Stat. § 38-33.3-316.3).

### **Colorado's HOA Information and Resource Center**

The Colorado legislature created the state's "HOA Information and Resource Center" in 2010 to address legislative and consumer concerns regarding HOAs in Colorado. While the HOA Center won't mediate or arbitrate a dispute you have with your HOA or provide legal advice, it will provide you with information regarding your basic rights and responsibilities under the CCIOA. The law that established the HOA Center is scheduled to sunset (expire) on September 1, 2025. To get contact information for the HOA Center and learn more about what it can do for you, go to the [Colorado HOA Information and Resource Center website](#).

### **HOA Lien Foreclosures in Colorado**

In Colorado, an HOA may foreclose its lien in the same manner as a lender can foreclose a mortgage. (Colo. Rev. Stat. § 38-33.3-316(11)). Because mortgages in Colorado must be foreclosed [judicially](#), an HOA must file a lawsuit in court to foreclose. This process differs from [most residential foreclosures in Colorado](#). Colorado home loans are usually secured by a [deed of trust](#) rather than a mortgage, and foreclosures of residential deeds of trust are typically [nonjudicial](#).

### **HOA Foreclosure Limitations**

Colorado law limits an HOA's ability to foreclose in certain circumstances.

**Limitation based on the amount of the delinquency.** An HOA (or the assignee of the HOA's lien, again, like a third-party debt collector) may foreclose only if the total amount secured by the lien is equal to six months or more of common expense assessments based on a periodic budget adopted by the association. (Colo. Rev. Stat. § 38-33.3-316(11)).

**Board approval is required before foreclosure.** The HOA executive board must vote in favor of foreclosure before proceeding with such a foreclosure on any given delinquent account and may not delegate this authority to an attorney, insurer, manager, or any other person. The board must formally resolve, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. (Colo. Rev. Stat. § 38-33.3-316(11)).

**Statute of limitations.** For the lien to remain valid, the HOA must initiate an action to enforce the lien within six years from the date the full amount of the assessments became due. (Colo. Rev. Stat. § 38-33.3-316(5)).

### **HOA Liens and Your Mortgage**

A common misconception is that the association can't foreclose if you're current with your mortgage payments. But an association's right to foreclose isn't dependent on whether you're [up to date on your mortgage](#). Instead, lien priority determines what happens in a foreclosure.

### **What Is Lien Priority?**

The priority of liens establishes who gets paid first following a foreclosure sale and often determines whether a lienholder will get paid at all. Liens generally follow the "first in time, first in right" rule, which says that whichever lien is recorded first in the land records has higher priority than later recorded liens. A first-lien has a higher priority than other liens and gets the first crack at the foreclosure sale proceeds. If any proceeds are left after the first lien is paid in full, the excess proceeds go to the second lienholder until that lien is paid off, and so on. A lien with a low priority might get nothing from a foreclosure sale.

But state law or an association's governing documents can adjust lien priority.

### **HOA Lien Priority in Colorado**

Under Colorado law, an association lien is generally prior to all other liens, except for:

- liens recorded before the declaration
- a first mortgage or deed of trust that was recorded before the date on which the assessment sought to be enforced became delinquent, and

- liens for real estate taxes and other governmental charges. (Colo. Rev. Stat. § 38-33.3-316(2)(a)).

But an HOA gets a [super lien](#) in an amount equal to the common expense assessments that would have come due during a six-month period before the HOA or a lender with a senior lien starts a foreclosure action. (Colo. Rev. Stat. § 38-33.3-316(2)(b)).

Under Colorado law, HOAs can't needlessly require homeowners to maintain water-dependent landscaping. (Colo. Rev. Stat. § 37-60-126, Colo. Rev. Stat. § 38-33.3-106.5). But HOAs are permitted to adopt and enforce design or aesthetic guidelines that, for example, require the installation of drought-tolerant vegetative landscapes. (Colo. Rev. Stat. § 37-60-126, Colo. Rev. Stat. § 38-33.3-106.5).

Learn more about Colorado laws that provide protections for homeowners who're part of an HOA when it comes to debt collection practices, foreclosure, and landscaping, among other things, in [Homeowners' Association \(HOA\) Laws in Colorado](#).