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**THE RIGHTS OF A HOMEOWNERS ASSOCIATION TO ASSESS FINES OR ASSESSMENTS AND
LIEN YOUR PROPERTY**

**WHAT GIVES A HOMEOWNER ASSOCIATION THE POWER TO LEVY FINES, FILE LIENS OR
REQUIRE OTHER PAYMENTS FROM PROPERTY OWNERS?**

In Colorado, a homeowners association or condominium association (“Association” or “HOA”) is a legal entity that is formed for the purpose of managing certain responsibilities for a group of neighboring properties. Associations are often non-profit corporations, but may take a variety of business entity formations. The owners of the properties within the Association’s boundaries are the Association’s members. Typically, the owners vote on major issues affecting the Association and on the members of the Association’s Board of Directors or Executive Board, and the Association’s Board is responsible for the day-to-day operations of the Association.

An Association is created by the recording of a declaration and a plat or map for the common interest community in the relevant county’s real estate records. Typically, this is done before a real estate developer begins to sell lots within a new community development, and the developer will place these lots into an Association. The rights and obligations provided by the declaration runs with the ownership of the lot, and when it is sold, future owners are subject to the covenants contained within the declaration. The declaration is typically titled some variation of “Declaration of Covenants, Conditions, and Restrictions” and is recorded in the office of the county clerk and recorder where the common interest community is located.

For most Associations, Colorado statute and the Association’s declaration provide the Association the power to collect assessments for common expenses from owners. Also, for most Associations, Colorado statute and the Association’s declaration provide the Association the power to impose charges for late payment of assessments, to recover reasonable attorney fees and other legal costs incurred when collecting assessments, to take other actions to enforce the Association’s rights, and levy fines for violations of the declaration, bylaws, and rules and regulations of the Association. For most Associations, Colorado statute and the Association’s declaration also impose a lien on a lot for any unpaid assessments and fines, and except in very limited circumstances, fees, charges, late charges, attorney fees, fines, and interest charged are enforceable with an Association’s lien.

When considering the purchase of property, it is crucial for a potential buyer to fully understand the terms of the covenants attached to the property’s title because all future owners of that property will be bound by such covenants. Receiving the advice of an attorney prior to purchasing a property in Association can assist a potential buyer with understanding full scope of the obligations imposed by their membership in the Association.

Essentially, an Association's governing documents (its declaration, bylaws, articles of incorporation, policies, rules and regulations, etc...) (collectively, "Governing Documents") are the rulebook that controls the operation of the Association and its relationship with property owners in conjunction with Colorado statutes. While these Governing Documents give the Association significant powers, it is important to remember that these Governing Documents also give property owners in the Association certain legal rights and also impose procedures, rules and regulations for the operation of the Association and its board of directors ("Board"), which must be followed by the Association. Also, the applicability of Colorado statutes related to common interest communities are going to depend on the attributes of the relevant Association and the issues—not all such statutes apply to all communities or to all facts.

WHY CAN A HOMEOWNERS ASSOCIATION MAKE ME PAY REGULAR DUES OR ASSESSMENTS TO THE ASSOCIATION JUST BECAUSE I OWN PROPERTY IN THE ASSOCIATION?

The Association's Governing Documents and Colorado statute provides an Association the right to levy assessments against its owners. Typically, the Association's Governing Documents will require payments of assessments from owners at certain intervals and create a process for setting the amount of the assessments based on the financial needs of the Association.

The Association may be responsible for the maintenance of common areas of property, which are owned by the Association and are for use by all or some of the owners. In many Associations, assessments are used to pay for maintenance and upkeep of common areas, such as a parking lot, and for common expenses of the owners, such as trash service. If the Association properly follows the procedure provided by the Governing Documents for setting and collecting assessments and is collecting them for an allowable expense, the Association does have the right to collect assessments from owners; however, for example, if an Association failed to follow the procedure in Governing Documents for increasing assessments, the Association may not have the right to increase the assessments. In many situations, an attorney's review of an Association's Governing Documents can reveal if an Association's assessment increase is allowable.

WHAT IS A SPECIAL ASSESSMENT? DOES AN ASSOCIATION HAVE THE RIGHT TO FORCE ME TO PAY A SPECIAL ASSESSMENT?

An Association will regularly assess their members (usually, monthly, quarterly or yearly) for the budgeted expenses of operating the Association and the routine maintenance of any common areas. Instead, a special assessment is levied by the Association against owners for special circumstances where the Association's financial need is greater than expected when the Association created its budget for that fiscal year. This often occurs in instances where the Association undertakes an unplanned project or repair. Special assessments also occur in instances where the Association's management of its finances and reserve fund is in bad shape, requiring an influx or cash from owners to keep the Association operating, or in cases of where there has been years of deferred routine maintenance that now requires immediate attention.

For example, when an Association unexpectedly learns that it needs to replace the roof for an entire condominium development but does not have financial reserves to cover the cost, a special assessment is an option to raise funding for this project.

While an Association often does have the right under the Declaration to levy special assessments against its owners, the Association can only properly levy a special assessment by following the procedures for the approval of a special assessment in the Association's Governing Documents, and its failure to follow these procedures may invalidate the special assessment. In most cases, the Governing Documents will require the Association to give notice of meetings on this issue before taking it to a vote, require owners to vote on the special assessment, and otherwise require a more informed democratic process to levy a special assessment. An attorney knowledgeable about Association law can assist owners by reviewing Association documents to determine if a special assessment is valid.

CAN YOU CHALLENGE SPECIAL ASSESSMENTS?

Yes, members of an Association may challenge a special assessment (or even regular assessments) on a number of grounds depending on the circumstances. In most situations, an Association's Governing Documents will outline a specific procedure for how the Association can properly levy a special assessment against its members. This procedure varies from Association to Association depending on the terms of their Governing Documents. Typically, the Governing Documents will provide for a vote of a certain percentage of the owners to properly levy a special assessment. Moreover, the Governing Documents will also specify how the voting is to be carried out, how to provide notice to owners regarding the vote or meetings on the issue, and may impose limits on the amounts of assessments or the percentage of an increase. In situations where an Association failed to follow all of the requirements for a vote about a special assessment, the special assessment may not be legally binding and may be challenged in Court. An attorney can assist in challenging an Association's assessment and determining whether the Association acted properly in approving it.

DOES MY ASSOCIATION HAVE THE RIGHT TO FINE ME FOR VIOLATIONS?

An Association's Governing Documents will indicate whether the Association can fine owners for certain violations of the Governing Documents, but most Governing Documents allow for fines. If its Governing Documents allow for such fines, the Association has the legal right to impose fines against its owners for violations of its Governing Documents. Most Associations have a lien against the owner's property for fines imposed against its owner.

However, most Associations may not fine an owner for an alleged violation of the Governing Documents unless the Association has adopted, and follows, a written policy governing the imposition of fines, and its policy incorporates certain statutory requirements. Also, if an Association failed to properly approve the covenant or rule that the owner is accused of violating, an owner may not be liable to the Association for the fines the Association is imposing for the alleged violation.

It is not unusual for an Association to improperly impose fines against owners or fail to follow their own policies related to imposing fines. In some situations, an Association will attempt to fine owners for a violation that is not even a violation in the Governing Documents. It is crucial for an owner dealing with Association fines to confirm that the steps being taken by an Association are actually allowed under its Governing Documents, and an attorney can assist owners greatly in evaluating the legality of an Association's actions.

CAN YOU DISPUTE FINES OR VIOLATIONS WITH YOUR ASSOCIATION?

Yes. Before an Association can fine an owner, Colorado statute requires most Associations to provide an owner a fair and impartial fact-finding process concerning whether the alleged violation actually occurred and whether that owner is the one who should be held responsible for the violation. Also, an owner has the right to require the Association to provide certain documents to substantiate the imposition of a fine or the alleged violation

In many instances, an Association has: imposed a fine that it does not have the legal right to impose under the Governing Documents and Colorado statute; issued a violation notice for circumstances that are not a legitimate violation; and demanded an owner make changes to his/her property or stop certain uses on his/her property without legal justification. Some unscrupulous Associations and property management companies have learned from experience that many owners will simply back down when challenged by their Association and never investigate if the Association had the legal authority for its actions. While not all Associations or property management companies operate in this fashion, an owner who receives a notice of an alleged violation, fine or other demand from an Association to make changes to their property or cease certain activities on their Property should carefully investigate whether the Association has legal authority to take this action and whether any fines are properly calculated. An attorney's review of an Association's Governing Documents can assist an owner to understand their obligations and the limits of the Association's powers.

CAN AN ASSOCIATION MAKE ME PAY FOR REPAIRS TO ASSOCIATION COMMON PROPERTY OR OTHER UNITS?

Depending on both the terms of the Governing Documents as well as the cause of the damage, an Association may have the right to compel an owner to pay for damages to the Association's common areas or other property, particularly if the damage was caused by that owner, his/her family or guests, or if the damage was caused by the owner's property. For example, in a condominium, if pipe providing water to an owner's unit leaked and caused damage to the Association's property or a neighbor's unit, it is possible that either that the owner or the Association could be liable for the damages. However, liability can vary greatly depending on the circumstances and the terms of the Governing Documents. Thus, an owner faced with damages or demands for reimbursement for damages should carefully investigate their legal rights and obligations before proceeding, and an attorney can be of great assistance in evaluating the potential liability for damages.

WHAT CAN AN ASSOCIATION DO TO COLLECT OUTSTANDING AMOUNTS OWED BY PROPERTY OWNERS?

In the event an owner fails to pay an Association for regular assessments, special assessments, late charges, attorney fees, fines, and interest, an Association can file a lawsuit against the owner to recover the amounts owed in a money judgment. It is very common for an Association to have the right to require an owner to pay the Association's costs and reasonable attorney fees incurred by the Association in a judgment or decree in any action or suit brought by the Association if the Association prevails. However, in such a lawsuit, the owner also has the right to dispute the amounts the Association claims are due and owing. While this collection procedure is nearly identical to any other creditor/debtor lawsuit for a debt, an Association also often has a lien against the owner's property for the amounts owed even without going to Court.

DOES AN ASSOCIATION HAVE A LIEN AGAINST MY PROPERTY?

Yes. Colorado law provides most Associations with a lien on an owner's property for any assessment levied against that property or fines imposed against its owner, and unless the Governing Documents provides otherwise, resulting fees, charges, late charges, attorney fees, fines, and interest are enforceable in that lien. This Association assessment lien is sometimes referred to as a "Super Lien," because Colorado law allows an Association's lien to have a limited first lien priority over most other liens previously filed against a property (such as a mortgage). The Association has the legal right to file a lawsuit for foreclosure its lien, and if the Association prevails, it can sell the Property to pay off the Association's lien. An owner should understand that Association liens carry very serious consequences. Even if the Association does not foreclose its lien, most residential mortgages have provisions that hold a borrower in default if any other lien—such as an Association lien—holds against the property, which give the mortgage company the right to foreclose its own mortgage. Therefore, an owner dealing with Association liens should promptly seek legal advice to deal with the situation as soon as possible.

CAN AN ASSOCIATION FORECLOSE ON MY HOME?

Yes. Under Colorado law, most Associations can foreclose a lien upon an owner's property to collect the amounts due. The foreclosure process requires the Association to file a lawsuit and the Court to approve the sale of the property with the proceeds paying the lien amount.

CAN I REQUEST ACCESS TO THE ASSOCIATION'S DOCUMENTS?

Yes. Under Colorado law, Associations are required to maintain certain records of the Association's operations and finances and make certain records available to members for inspection and copying. Associations are also legally required to maintain an accurate accounting of each Association member's account and to provide a written statement setting forth the amount of unpaid assessments (including fees, charges, late charges, attorney fees, fines, and interest charged) currently levied against an owner's property upon the owner's request. Despite these legal requirements, some Associations will discourage members from inspecting documents or refuse document inspection requests. An owner should exercise their legal right to inspect and copy records related to any issue that he/she is having with the owner's Association and should be particularly concerned if the Association refuses permissible document inspection requests as this can be a sign of problems with the Association's management or the existence of documents favorable to the owner's position. In many circumstances, the involvement of an attorney representing an owner can help persuade an Association to properly comply with its document inspection obligations, and an attorney can assist an owner to obtain documents from an Association to help defend an owner from an improper assessment levied against that property or fines imposed against its owner.

WHAT CAN I DO IF AN ASSOCIATION IS CHARGING ME INCORRECT AMOUNTS?

If an Association is charging an owner incorrectly for assessments, fines, fees, charges, late charges, attorney fees, fines, and interest or improperly holding an owner responsible for an alleged violation of the Governing Documents, an owner has the legal right to challenge the Association's actions and request many categories of documents related to the issue and the Association's operation. An Association may stubbornly move forward with their position against an owner even when the Association's records or Governing Documents demonstrate that the Association is acting improperly. In such circumstances, an owner can dispute the Association's actions, document his/her dispute with the Association, and attempt to reach a

resolution. The assistance of an attorney practicing Association Law can assist an owner dealing with a difficult or stubborn Association as an attorney can detail to the Association its legal obligations under the Governing Documents and Colorado law, obtain documents from the Association, demonstrate how the Association has failed to follow its own Governing Documents, protect an owner's legal rights, and, if necessary, represent the owner in litigation against the Association.

HOW CAN I DEAL WITH PROBLEMS WITH MY ASSOCIATION?

The best way to deal with Association problems is to be fully informed of the Association's rights and obligations. An Association may assume that an owner lacks an understanding of their legal rights under the Association's Governing Documents and Colorado law and use this assumption to pressure an owner to back down unjustly.

Before purchasing a property in an Association, a purchaser should understand the Association's Governing Documents. An attorney's review of an Association's Governing Documents prior to purchasing a property can often help avoid costly problems with the Association in the future.

If unanticipated problems later arise with an Association, an owner should investigate the issue to confirm that the Association is acting properly and consider retaining an attorney to assist with this evaluation and explore promptly resolving the issue with the Association before it escalates and becomes more costly. An owner should document his/her communications with the Association in writing to maintain a record. It is important to note that many Associations maintain attorney representation at all times to protect the Association's legal interest, and therefore, an owner should strongly consider retaining an attorney to operate on an equal footing with an Association when an issue arises and to assist with understanding, protecting and enforcing an owner's rights.

HOW CAN I RESOLVE AN ASSOCIATION DISPUTE?

If you have further questions about an Association's rights or your rights as a member of an Association, or need representation on an Association matter, please contact The Law Firm of Jessica H. Miller, LLC at (303) 443-0568 or jessica@jhmillerlaw.com.

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