

2013 – 2014 HOA Legislative Initiatives

We will be working on identifying Colorado legislators to sponsor Bills to accomplish the following:

1. Modify all Colorado HOA laws to include an out of court binding dispute resolution process as the primary means for resolving HOA homeowner complaints. Most homeowner complaints concern compliance with HOA State law and their own HOA governing documents. These cases don't belong in court and clutter the judicial system and add cost. Homeowners seek a non-litigious, affordable and accessible dispute resolution process that has a beginning and end to the process, that avoids court unless it is the choice of the homeowner prior to filing their complaint with the State, and a process that avoids all the pitfalls of mediation (which is available now under the law) that adds cost, time, litigation, and no guarantee of a decision on these simple cases.

This is our number one issue and the missing link in enforcing the good HOA legislation we already have in State law. Refer to our web site for a detailed narrative of this process.

<http://www.coloradohoaforum.com/outofcourtbinding.html>

It's simple: no courts, complaints filed by homeowners for non-compliance with State HOA law and their own governing documents are filtered for validity by the State Office, if complaint is found to be of merit it is forwarded on to a jurisdiction that collects information from the homeowner and HOA, State litigator attempts to mediate a solution but in every case a decision is rendered, the cost is under \$50 for the homeowner. Legal costs are generally not awarded to either party. No rights to due process are given up by the homeowner, no cost to the taxpayer as the litigants and HOA registration fees fund the effort, and the process gives neither the HOA nor HOA Board an advantage.

2. Improve upon Colorado legislation that licenses HOA property managers

DORA, the State Agency implementing the licensing and regulatory oversight, HB 1277, of HOA property managers (Community Association Managers also known as CAMS's), will be encouraged to identify multiple educational providers that can be used by CAM's to meet mandated educational requirements and to ensure costs are contained. DORA will be encouraged to work with our Community College System to develop and provide courses both in the classroom and over the internet. Information on educational providers to be posted on the DORA web site along with costs. We will also work to remove the endorsement of a private company and their courses from legislation directing licensing of CAMS's: this is highly inappropriate and unprecedented. The legislation must be more definitive on CAM responsibilities and also indicate that any CAM who knowingly advises an HOA to violate State HOA law or their own governing documents and/or is aware of an HOA violating HOA State law and not reporting it to DORA will lose their license.

3. Limit fees and administrative costs on HOA debt

The ability of an HOA to assess fees and fines and administrative costs on HOA debt must be capped and limited. Suggested limit of \$25 a month or 10% of amount due plus any costs to send certified mail during the first 6 months of collection efforts. There are collection agencies that specialize in HOA debt collection that charge less than this amount to pursue collection. After six months the HOA can utilize outside collection agencies with no fees in excess of that defined in Consumer Credit laws. Also, when a homeowner enters into a repayment plan (defined in recent legislation HB 1276) with the HOA such limits also apply. The idea of debt collection is to collect the debt not place the homeowner further into debt. Note, the HOA doesn't benefit from excessive fees it only receives the amount owed to them.

4. Increase the roles, responsibilities, authority, and enforcement capabilities of the Colorado HOA Information Office and Resource Center including involvement in administering an out of court binding dispute resolution process.

Expand the roles and responsibilities of the State's HOA Office to include implementing and administering a dispute resolution process as indicated in item 1 of this list. This Office would also expand its' role in conducting community outreach programs and posting educational information on its' web site to inform HOA's, CAM's, and homeowners of the most current HOA legislation and other issues. The Office would also continue to receive homeowner complaints, produce its' annual report, and work to register all HOA's in the State. This Office and its' expanded role would be funded through HOA registration fees and at no cost to the taxpayer.

5. Restrict/limit transfer fees in the sale of HOA homes

Restrict and/or limit the assessment of real estate transfer fees on the sale of HOA homes. This practice is not allowed when selling a home outside of an HOA community. SB 11-234 allowing this practice needs to be amended to end this exception in HOA home sales.

6. Require realtors and home buyers to be provided a copy the HOA's governing documents, most recent HOA financial statement, and HOA insurance coverage and certify they read them prior to purchasing a home. This simple process will make for a more informed buying decision on a home and also preclude homeowners from arguing they didn't know about the covenants, restrictions, and controls when filing an HOA complaint. Understanding the insurance coverage carried by the HOA will allow the homeowner to better understand and not duplicate coverage when purchasing their homeowner's insurance and their eligibility for H-06 type homeowners insurance (that can save on insurance premiums).

7. Term limits on HOA Board members when others are willing to serve. Of the major problems in HOA governance is the problem of long serving and so-called "bully Boards". Bully Boards are characterized by not listening to homeowners, controlling elections to ensure re-election, controlling access to information and inquiries, practicing favoritism, denying homeowners access to HOA records, using the HOA lawyers and funds to fight homeowner efforts for reform, etc. If elections for Board members involved term limits when others were willing to serve this would open HOA governance to others regardless of efforts that long serving Board members practice to ensure their continued service. A Board member could serve two consecutive terms of two year after which they would not be allowed to serve again until two years passed. If no homeowners ran for election to the Board the incumbent would not be restricted in the number of consecutive terms served.

8. Include as part of the HOA registration process a certification that HOA Board members read their own HOA governing documents and the information posted on the State HOA Office web site concerning State HOA law.

This would simply be added to HB 1134 in the sub sections dealing with the HOA registration process. This would ensure that HOA Board members had a basic understanding of HOA law and their own governing documents. A knowledgeable Board will more likely be compliant with the law. A Board knowing that when a homeowner files a complaint related to compliance with HOA law and their governing documents must defend their actions based on such law may well be more agreeable to working out problems with homeowners.

9. Implementation of HB 1277 that licenses and regulates community association managers (also referred to as property managers).

HB 1277 was changed to implement its' requirements until July 2015. There is no good reason this cannot be rolled back to July 2014. Deadlines to meet educational requirements could be delayed until December 2014 but licensing completed by July 2014.