

## **Implementing an Out of Court Binding Dispute Resolution Process A Colorado Case Study: feasibility and cost**

Colorado has many comprehensive and definitive State HOA laws but every one of them lacks a viable means of enforcement from the home owner's perspective. The simplest violation of State HOA law or a home owner's HOA governing documents by an HOA Board must be resolved in court: a costly (several thousand dollars for very simple cases), litigious and time-consuming process. This matches the home owner's limited financial resources against the unlimited financial and legal resources of the HOA: not a level playing field. Most home owners don't/can't pursue their rights under the law even when 100% in the right. Thus State HOA laws are mostly administrative and "feel good" and provide little enforcement of home owner's rights.

State law in Colorado has included verbiage making mediation a means to pursue home owner's rights in an out of court venue. This simply hasn't worked. Exemplary of this is the several thousand complaints/inquiries received by the State's HOA Office in its' first two years of existence. Additionally, mediation is not a final but a hopeful means of dispute resolution. Mediation may result in a written agreement but the fact is either party can breach the agreement and the home owner ends up in court. Worse yet, mediation requires the home owner to gamble \$300-500 on a mediation session with the hope of an agreement: most home owners can't gamble this amount of money on a hopeful agreement, they want closure. Information from the city of Ft. Collins, CO in their out of court dispute resolution process indicated upwards of 80% of complaints never reached mutually agreeable and enforced resolution. Also problematic is that mediators are not a recognized profession and have no professional standards. Anyone can be a mediator and anyone can be an HOA mediator without knowledge of HOA laws. In too many cases the law allows for an HOA to pick the mediator not the home owner or agreed upon collectively. [Mediation is at best window dressing for legal enforcement](#) adding time, cost and uncertainty to enforcement of home owner rights.

A [State Study in 2013](#) addressed the need for identifying a viable means of dispute resolution. Recommendations were identified suggesting effective means for processing home owner's complaints and enforcing HOA law. Directly mentioned is the [implementation of an out of court binding dispute resolution process](#): aka alternative dispute resolution (ADR). In other words, an out of court solution. [A 2019 State study](#) has strongly recommended the State HOA Office implement an out of court dispute resolution process.

The State of Colorado had a model system (vetoed in 2019 but up for consideration to continue in 2020) for [an out of court dispute resolution process concerning home owner complaints with their HOA property management company](#): limited on enforcement but provided for home owners to submit complaints at no cost to a State Office, have them investigated and could result in punitive but limited action against violating property management companies). The [State also passed a law in 2019](#) that sets up a dispute resolution process managed by the State

to resolve home owner vs their mobile home/manufactured home complaints. Why not a similar, affordable and accessible process for HOA home owner complaints with their HOA?

The State would have a relatively easy time to fund and implement an out of court binding dispute resolution process for HOA vs home owner complaints. The State HOA Office is already staffed, occupies office space, has a web site, provides home owners with a web based application to file complaints, reviews and classifies all home owner complaints/inquiries, and is authorized to collect HOA registration fees. The missing link to implementation is (other than passing a law) mostly assigning vetted complaints to approved arbiters for dispute resolution. The Dept of Regulatory Agencies already has a staff of arbiters that could be expanded or assigned to the State HOA Office. No learning curve is required and no new bureaucratic office would be needed.

Funding the State managed dispute resolution process for home owner complaints can be completed with no taxpayer funds, period! HOA registration and HOA complaint filing fees can easily fund the program. Current registration fees cover the State HOA Office expenses. Funding for ADR: HOA complaint filing would carry some minimal fee, \$50-75, to reduce the number of frivolous inquiries. HOA registration fees of thirty five to fifty cents per HOA household per year would be more than enough to fund the hiring of additional staff and subsidize the ADR process. There are over 850,000 HOA registered households thus no home owner would incur financial burden. It can also be anticipated that subsequent years after implementation the resources required to investigate and litigate the program will lesson when HOA Boards understand home owners have a workable, accessible, and affordable venue to litigate their rights. HOAs and home owners would save in legal costs by staying out of court thus far offsetting any increase in registration fees. The court system would save by decreasing the case load related to HOA litigation. Common court cases with home owner complaints, such as suing to gain access to HOA documents, would become a low cost, affordable effort vs a home owner (and HOA) spending thousands in a court case.

Out of court binding dispute resolution administered by the State meets the tests to provide HOA home owners with an affordable, accessible, and expeditious means to enforce their rights under the law; requires no new taxpayer funding; will not require a new Office or bureaucracy; will not impose any burden on business or home owner; and will make all existing State HOA laws and HOA governing documents immediately effective from the home owner's perspective.