

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 most simple violation of State HOA law or a home owner's HOA governing documents by an HOA Board must be resolved in court. 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 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. 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. 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.

A [State Study in 2013](#) addressed the need for identifying a viable means of dispute resolution. Recommendations were identified suggesting effective means of processing home owner's complaint 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.

Colorado does provide an ADR home owner complaint process related to HOA property management companies through the [State's HOA property management licensing law](#). Home owners can file a complaint on-line, have it vetted, and if found to be substantive, the State investigates the complaint. The filing fee is free. Although the State is limited in awarding plaintiff remedies to fining property managers and/or revoking their licenses, this venue does provide an ADR solution. The question is, if good enough for property manager complaints why not for HOA complaints?

The State would have a relatively easy time to fund and implement an ADR (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.

Funding the State ADR 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.

The State's Department of Regulatory Agencies (DORA) in which the State's HOA Office resides has the experience to collect fees and conduct an ADR program. Thus the learning curve and implementation time to implement HOA ADR would be short with plenty of precedence to support the program.

ADR 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.