

## Out of Court Binding Dispute Resolution

The one common element with all HOA legislation is inadequate and unworkable enforcement provisions. Read any of the HOA laws posted on this web site and you will find very little in them in the way of enforcement or penalties. The only means for a homeowner to hold an abusive HOA or property management company accountable for non-compliance with their own governing documents is our Court system: a costly, litigious, complicated, time consuming process that is out of reach for most homeowner. It is a pay to play venue that doesn't work. The HOA uses your unlimited HOA dues to defend abusive HOA Boards (and property management companies) and you pursue your rights with very limited personal funds. Hardly a level playing field. A mandatory, out-of-court binding mediation (arbitration) process to resolve most HOA homeowner complaints can instantly turn very weak legislation into a viable, effective means for enforcing homeowner rights. This would involve an easy, affordable three step process. The homeowner files a complaint with the State Office (cost around \$100). Next, if the complaint is found to be justified based on HOA law it is assigned to a medi-arb (mediator with decision making authority). Then, upon payment for the medi-arb by the homeowner (about \$150), the homeowner and the HOA representative sit down, have their case heard, and a decision is rendered. The end. This process is fair to all parties, reduces costs to both HOA and homeowner, is very timely and not complicated, and in no way interferes with the governance of an HOA by its' Board. This process is a very good improvement over the current pay-to-play court system, allows homeowners to have their dispute heard, and sure beats a homeowner gambling thousands in a court case on a simple issue. Yes, only the homeowner and an HOA can lose in court: 1) the homeowner loses financially with their legal costs and most likely paying the HOA's legal costs if they lose 2) if the HOA loses the homeowners association must pay the lawyer. Note the only party in these HOA court cases that can't lose is the lawyer, win or lose they get paid. We need most HOA complaints handled out of court, period. Most HOA disputes are simple and involve such complaints as homeowner access to records and open governance, small amounts of delinquent debt and fees/fines, and compliance with by-laws/covenants: none of this requires lawyers and our costly Courts. These cases add costs to court operations and court case levels. Our group, the Colorado HOA Forum ([www.coloradohoaforum.com](http://www.coloradohoaforum.com)) has been pursuing inclusion of this dispute resolution process with our legislators and State entities. A simple paragraph or two in the many State HOA laws could bring effectiveness to such legislation and allow for a venue for dispute resolution that is accessible, affordable, and fair for both the homeowner and HOA (and its' property management company). The argument that such a process would deny a homeowner of due process in our Court System is as weak as the enforcement provisions in current law. Our process still allows a homeowner to go to court but optionally use the medi-arb process to pursue their complaint. Keep in mind we are not addressing felony or any homeowner complaint in

excess of \$7,500. We are suggesting this process for issues of compliance with State law and a homeowners HOA by-laws and governing documents.