

A Homeowners Association (HOA) White Paper

**Understanding Out of Court Binding Dispute Resolution
For HOA Home Owner Complaints**

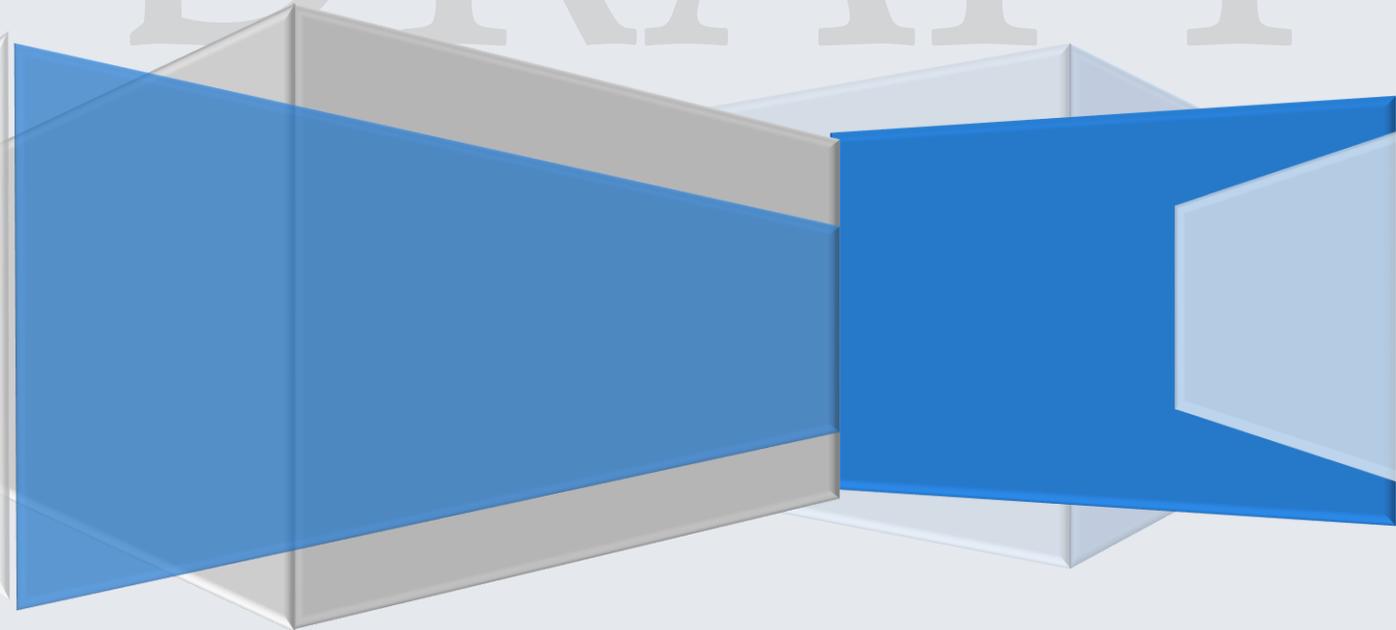
*A Comprehensive Analysis of the need, benefits, process, and cost to implement
an out of court binding dispute resolution process for HOA home owner complaints*

**Case Study: Out of Court Binding Dispute Resolution for HOA Home Owners
A Colorado Case Study addressing the need, feasibility and cost**

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Understanding Out of Court Binding Dispute Resolution For HOA Home Owner Complaints

A Comprehensive Analysis of the need, benefits, process, and cost to implement

Implementing an Out of Court Binding Dispute Resolution Process
[\(also reference cost perspective study on this topic on Forum website\)](#)

A Colorado Case Study: feasibility and cost

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Background:

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. 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: they have neither the time or money. Thus State laws are mostly administrative and "feel good" and provide little enforcement of home owner's rights.

HOA home owners need access to an affordable, non-litigious and out of court venue to resolve their disputes with their HOA governing Board. This is referred to as "out of court binding dispute resolution" process. Another description is alternative dispute resolution ADR. This process would allow HOA home owners to file a complaint with the State HOA Office, pay a minimal and affordable filing fee, have their complaint vetted for substance, assigned to a trained HOA arbiter, and participate in a dispute resolution process that delivers an enforceable decision. [No cost to home owners, HOAs or businesses nor any new taxpayer money to implement.](#) This is similar to a process implemented by the Department of Regulatory Agencies (DORA) for processing complaints for licensed HOA Property Managers (aka Community Association Managers (CAM)). The process is also similar to that provided to home owners living in mobile home and manufactured home communities administered by the [State under State Law HB 19-1309](#)

This process would will immediately empower home owners and make all Colorado HOA laws effective from the home owners perspective.

[Flow chart of process](#) Note this process places the home owner (complainant) in control by allowing them to pursue a court action or using the State dispute resolution process.

Mediation vs. Out of Court Binding Dispute Resolution Administered by the State

State law and HOA governing documents in Colorado have included verbiage making mediation a means to pursue home owner's rights. This simply hasn't worked and is a poor option this present day due to the cost, time and uncertainty and lack of closure in resolving problems. Exemplary of mediation as a problem solver for HOA home owner problems are the several thousand complaints/inquiries received by the State's HOA Office in its' first two years of existence. This is an impressive number since the Office is mostly unknown to the public. 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 an agreement and this leaves the home owner in court which they attempted to avoid in the first place and most likely will not spend additional money for a court action. Home owners simply can't gamble \$300-500+ on a mediation session with the hope of an agreement: home owner complaints need an affordable, accessible venue for dispute resolution with a final outcome and not a "maybe" an outcome.

Also, problematic is that mediators are not a recognized profession and have no regulated 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.

Although State law and HOA governing documents recommend mediation no party is legally accountable to conduct mediation and if an HOA refuses that only leaves the court system. The idea of mandatory mediation also ensures home owners must gamble their funds on a hope of decision and this is not bringing finality to disputes but more time, cost, and process that home owners don't benefit by. Mandatory mediation, although offered in HOA governing documents, mostly kicks the can down the road to solution with defiant Boards and home owners while out of court binding dispute resolution via the State can exhibit a start and finish and end to a dispute with a binding decision.

State HOA Study

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 complaints and enforcing HOA law. Directly mentioned is the [implementation of an out of court binding dispute resolution process for HOA home owner complaints](#). The State Sunset Review of the HOA Office also indicates enforcing home owner rights to be the number one concern and the solution is an accessible and affordable process.

Colorado licensed CAMs in 2013 through HB 13-1277. Implementation and licensing of the first CAMs was in July 2015. This law provides an ADR-like home owner complaint process related to HOA property management companies through DORA. 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 it can impose fines on property managers and/or revoke their licenses. The process does bring closure to the complaint by rendering a binding, legal decision. Home owners are not precluded from taking their complaints to court. However, the question must be asked, “if a State administered dispute resolution process is good enough for HOA/home owner vs property manager complaints why not for home owner vs HOA complaints?”

Justifying the Need for Out of Court Binding Dispute Resolution

The State Legislature for decades has recognized the ever expanding population living under HOA governance and the need for oversight. In 1991 the State passed a comprehensive law, Colorado Common Interest Ownership Act that defined HOA governance, home owner’s rights, and a host of other related issues. Since that time many additional HOA Bills have been passed into law. HOA laws do a good job defining home owner rights and “what should be” but do a very poor job in providing a means of enforcement for home owners. Not one of the laws provides a viable, accessible, and affordable means for home owners to enforce their rights upon violations in the law except for our costly, litigious, and time consuming court system.

The Legislature, recognizing the continued impact on the economy and living situations of home owners, passed in 2013 HB 13-1134 establishing a State HOA Office and also directing this Office to conduct a formal study on HOA dispute resolution. During the first few years of the HOA Office’s existence, several thousand complaints and inquiries were received. The Office did complete the study as directed and in it was a recommendation to implement an out of court dispute resolution process for HOA

home owner complaints. State legislators have failed to act on the Study's recommendations.

The State HOA Office was created with no investigative or enforcement authority. Although there was support for some limited ADR initially, this Office was only assigned administrative tasks. The Office receives, classifies, and reports on home owner inquiries, registers HOAs, and completes a public education role with the public. Frustration is commonly expressed by home owners when contacting the Office. They find out the Office doesn't get involved in home owner disputes with their HOA and are instructed to hire a lawyer and go to court (which in fact almost all home owners can't afford). The State HOA Office is in a good position to be part of the dispute resolution solution with additional authority and managing a dispute resolution process.

With upwards of 60% of Coloradans living under HOA governance in over 8,000 HOAs involving financial management of hundreds of millions of dollars in home owner's funds through HOA dues, the need for oversight and consumer protections is great. Passing HOA laws laid the groundwork but without a means to enforce these laws home owners are left vulnerable to the management and financial abuse and violations in the law that can't be rectified. It can be argued that few other issues beyond taxes, health care and schools affect so many Coloradans. Nearly every new housing community, be it single family homes, condominiums, townhomes, and mobile home parks in Colorado involves HOA governance. The number of home owner concerns and complaints is a frequent issue to legislators, the State HOA Office, our courts, and the media. Consumer protections in the form of providing a viable means of enforcing laws for such a large impacted number of citizens is long overdue.

The need for out of court binding dispute resolution can also be exemplified by the many instances in which home owners have spent thousands (and tens of thousands) of dollars on court cases that could have easily been otherwise settled out of court inexpensively and in a fraction of the time and not cluttering the court system. Then there is the unrecognized number of HOA home owners who simply drop their pursuit of enforcing their rights knowing they don't have the resources to fight the unlimited funding and available legal counsel of the HOA Board. Out of court binding dispute resolution would save home owners and HOAs in legal costs, make our otherwise weak HOA laws very strong, and empower all home owners to be protected and pursue their rights under State law and their own HOA governing documents.

Types of Complaints Applicable to Out of Court Binding Dispute Resolution Process

Most home owner vs HOA complaints concern violations in State HOA laws and a home owner's HOA governing documents. These are the types of complaint that should not require court cases and can easily be litigated based on written law with no need for extensive investigations or lawyers. Typical problem can involve access to HOA records, election irregularities, covenant enforcement, excessive fees. Lawyers can participate in the process but it is not meant to be a venue of intensive proceedings and challenges and legal costs. Most cases violating State HOA laws and HOA governing documents to be handled under this process are simple and easy to litigate. This process would not involve felony cases. Home owners can always choose to litigate in court vs using the State dispute resolution process.

No accountability or penalties for Abusive HOA Boards

Your Board violates State HOA Law or its' own governing documents. Knowing most home owners can't afford or gamble money on mediation or a court case they have no incentive to change their behavior. When taken to court, the only winner will be an eager court-centric HOA lawyer: they get paid win or lose. If the HOA Board is found to be in violation they will not be held to any financial remedy or be personally liable: they are bonded, their legal fees are paid for by the HOA, and they will retain their Board seat (unless fraudulent or felony activity is involved). Any cost to defend a dysfunctional Board in a home owner complaint is a loss to all home owners and thus a need for an expeditious and low-cost process to resolve problems. The goal of most home owners in dispute resolution is to be able to present their case and have it litigated with a binding solution that restores their legal rights or refutes their contentions. Home owners can live with a ruling but want to be able to have their day in court as the saying goes. Out of court binding dispute resolution is not aimed at penalties for HOA Boards but enforcement of home owner rights. Penalties can be applied to HOAs for non-compliance with the law and will be determined by DORA. Currently, HOAs are penalized for not registering with the State and thus a precedence exists in this area.

Out of court binding dispute resolution will not impede volunteerism but will benefit the HOA

This process will not impact the ability of HOAs to get their home owners to serve on Boards. Criminal violations will hold Board members personally liable but infractions of governing documents will not result in personal fines to Board members or imposing any personal financial liability. A Board member may be directed to resign or take an

educational course. Knowing that home owners can use a State dispute resolution process will make Board members think twice before violating HOA laws and more willing to respond to home owner conflicts. Since Board members are bonded their protection from personal liability is limited to non-existent

Out of Court Binding Dispute Resolution will not drive up HOA or home owner legal costs but decrease them

This process will not cost but save HOAs and home owners:

HOA legal costs for court cases reduced to near zero

Home owners save on legal costs

Less expensive than court: Less costly than court

Any increase in HOA registration fees more than offset by savings in HOA legal costs

HOA use of lawyers reduced thus cost savings

Problem resolution is quicker, more expeditious than court

Unlike any costs expended on mediators, all complaints bring finality

Cost savings to our overloaded court system

Home Owners Can Still Elect to Litigate in Court

A home owner would have the option to file their complaint via the State or the court system thus no legal rights are sacrificed.

Funding and Implementation of an HOA Home Owner Complaint Process

The State of Colorado would have a relatively easy time to fund and implement an out of court binding dispute resolution process for HOA vs home owner complaints within DORA. [Reference study on implementation](#)

The State HOA Office is already in place and 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, completes annual reports on the number and types of complaints and inquiries, and is authorized to collect HOA registration fees. The missing link to implementation and funding (other than passing a law) is mostly related to assigning vetted complaints to approved arbiters for dispute resolution.

Funding the State process for home owner complaints can be completed with no new taxpayer funds, period! HOA complaint filing fees and HOA registration fees can fund

the program and not impose any financial burden on HOAs, home owners, businesses or taxpayers.

HOA complaint filing might carry some minimal fee, \$50-75, to reduce the number of frivolous inquiries, and help fund the program. Based on the average number of HOA complaints/inquiries received (approximately 6,000) by the State in previous years and the number classified as complaints (1,200) it can be anticipated that the filing fee would generate no less than \$70-90,000 (1,200 X \$75) and most likely and conservatively upwards of \$120,000+. The lower amount unrealistically assumes that 4-5,000 of the inquiries would not file a complaint. However, of this 5,000 it can be assumed a good number would pursue their inquiry into a complaint knowing that a costly court case was not required and this process would enable them to pursue their rights.

The State's HOA Office adjusts the registration fee annually and can also redefine the criteria used to determine the fee. The registration fee is flexible to ensure funding the State HOA Office. There are approximately 8,200 – 8,400 registered HOAs. The approximate number of living units in all registered HOAs is 825,000. Any fee increase would amount to only pennies per home but net savings overall in legal costs to HOA, home owners and the court system.

Additional staff to fund the system would require hiring/contracting up to two full time arbiters. Assuming each arbiter's annual total cost would be \$85,000 (total \$170,000). At least \$100,000 revenue would conservatively be generated from filing fees leaving a funding gap of \$70,000-100,000 to be filled with registration fees.

An HOA Registration fee increase of approximately \$10-15 a year would fund this process raising \$80,000 – 120,000 (8,200 X 15+/-). The annual registration fee adjustment has involved greater amounts. The average cost per household per year would approximately be no more than fifteen to twenty cents per year.

HOAs and home owners will reduce their legal costs by staying out of court thus offsetting any increase in registration fees. An HOA that can avoid just one court case and resolve the issue with this process can save thousands of dollars. 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 receive, review, investigate and render decisions. The learning curve and implementation time to implement an HOA dispute resolution process would be short with plenty of precedence to support the program.

Arbiters would be knowledgeable in HOA law, independent and cost effective

The State would develop a pool of HOA arbiters. DORA (State HOA Office) would set registration and complaint filing fees to fund the program. Arbiters would have to fulfill educational requirements that provide knowledge of State HOA law or other requirements defined by DORA. Arbiters would be required to pass a background check and be unaffiliated with any HOA or property management company in order to maintain independence.

Conclusion:

Colorado HOA laws are definitive and extensive but all laws are absent of an accessible and affordable dispute resolution (enforcement) process. Without a viable enforcement process the laws are mostly administrative and very ineffective and home owners don't pursue their rights under the law.

The justification for implementing an out of court binding dispute resolution process is supported by a 2013 State HOA Study, by thousands of complaints and inquiries received by the State's HOA Office, emails and calls to legislators concerning HOA home owner rights, and the frequent media coverage of home owner problems.

The HOA industry is comprised of two major segments: HOA Boards and HOA property managers (both to serve home owners). The legislature passed a property manager licensing law to address enforcement and accountability of property managers. No such accountability exists for HOA Boards. That program provided an out of court dispute resolution process for home owner complaints with a property manager company. The program, virtually unknown to the public, has resulted in hundreds of complaints filed by home owners resulting in punitive actions for violations. Without such a program violations would not have been pursued by home owners due to the time and cost involved.

HOA Board violations of State HOA laws and HOA governing documents remain mostly uncontested by home owners due to cost and the unlevel playing field matching home owner's limited legal and financial resources with the unlimited resources of the HOA. Out of court binding dispute resolution administered by the State would immediately make enforcement of HOA laws effective from the home owner's perspective.

State administered dispute resolution 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.

State Legislators need only sponsor and pass a Bill to direct DORA and its' State HOA Office to implement this program for HOA home owner complaints. This has already been completed for home owners in mobile home and manufactured home communities.

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