

Colorado HOA Forum

Web Site: www.coloradohoaforum.com

Email: coloradohoaforum@hotmail.com

June 2012

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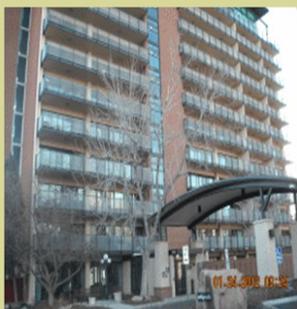
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Check out our blog on the web site

*The Colorado HOA Forum is an advocacy group for HOA homeowner's rights. We recognize the need for HOA legislative reform to ensure effective and fair HOA governance. We identify areas of concern and offer solutions that don't interfere with or distract from the benefits and expectations of living in an HOA. Our efforts don't hinder volunteers from serving on an HOA Board and ensure such service will be the altruistic and giving experience as intended. Our efforts are directed at ensuring HOA Boards and property management companies abide by their own covenants, controls, and restrictions and State HOA laws and guidelines. We are strong advocates of making changes to current HOA law to include a homeowner dispute resolution process that is accessible, affordable, and fair for both homeowner and HOA through mandatory out-of-court binding arbitration/mediation. **Until this happens, current HOA law will remain very weak and ineffective from the homeowner's perspective.***

You can contact us at: www.coloradohoaforum.com or email us at coloradohoaforum@hotmail.com

Please join our effort by signing up on our web site. The web site contains all our articles, reference information, and tools to help you write your legislator and State offices.

You are encouraged to write us, your Colorado legislator, and the Colorado Information Office and Resource Center about concerns you have about HOA governance and your homeowner's rights. Our web site makes all this easy with links to State Representatives and the HOA Office. THIS DOES HELP!!

If you would like our business cards to distribute to your neighbors or at HOA meetings, request via email. Ask your friends and neighbors to join our movement and write to those mentioned above.

The problem:

"...the current Court system as a venue for HOA dispute resolution is a pay-to-play process that works well for HOA and property management companies with unlimited financial resources but is too costly, complicated, and litigious for most homeowners."

"...designating our Courts for HOA homeowner dispute resolution is like the poll tax, you could vote if you could pay, most couldn't, (similarly) you can take your homeowner's complaint to Court if you have the money, but most don't, this environment makes our HOA legislation ineffective from the homeowner's perspective"

The solution:

"...mandatory out-of-court binding arbitration (mediation) using professional unbiased arbitrators for most homeowner complaints will have the immediate effect of making Colorado HOA laws enforceable from a homeowner's perspective, this process will be efficient, accessible, affordable, and fair for both homeowner and HOA and relieve the Court System of its' high volume of cases and congestion"

We don't need more HOA Legislation, we need to make the legislation we have more effective and to include:

- ◆ **Stronger enforcement and penalty provisions**
- ◆ **Mandate out-of-court binding mediation for most homeowner complaints**
- ◆ **Cap fees, fines, legal costs, and administrative add-ons on homeowner debt to the HOA**
- ◆ **End most foreclosures of homes related to HOA debt**
- ◆ **Regulate and license property management companies to ensure their compliance with all HOA legislation and the governing documents of the HOA's they serve.**

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HOA Legislation: fix what we have

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Frustration characterizes citizen efforts to improve HOA (Homeowner's Association) legislation. HOA efforts in Legislative sessions 2011 and 2012 focused on defining what records HOA's must retain and release to homeowners, guidelines to prevent conflicts of interest among HOA Board members, an effort to regulate and license HOA property management companies, and the opening of the HOA Information Office and Resource Center. This work mostly reiterated and clarified what was already in State HOA law. It also, unfortunately, replicated the flaws in all previous HOA laws. Specifically, failure to address any effective, accessible, and affordable enforcement processes from the homeowner's perspective making the "law" basically unenforceable.

It's back to the future with the 2011-2012 legislative effort with little support for Colorado's 1.5 million HOA homeowners. Actually, Colorado doesn't need more HOA legislation. We need to make current legislation more effective. HOA law already clearly, effectively, and fairly addresses HOA governance and homeowner's rights. To make it work for homeowners, it needs to be modified to include enforcement and penalty processes other than our Court system. The Courts are expensive, time consuming, and complicated making this means of enforcement basically ineffective and inaccessible to 99% of homeowners. It's like the poll tax which only allowed those who could pay to vote enjoy the benefits of voting rights. In the HOA legal and

legislative world it is a totally pay-to-play environment if you want to pursue your rights. Including an out-of-court binding mediation process in State laws for most HOA disputes would allow for effective, accessible, affordable, and fair enforcement of HOA law. Why is this so difficult? Our advocacy group, Colorado HOA Forum, www.coloradohoaforum.com, applauds recent legislative efforts on HOA reform but is disappointed with the results.

One bright spot was the creation of the Colorado HOA Information Office and Resource Center. This Office is an administrative entity with the primary purpose of recording and reporting HOA homeowner complaints. While it has no mediation or enforcement authority, it did provide valuable insight into the types and high number of homeowner complaints against HOA Boards and property management companies.

Also addressed was the issue of licensing and regulating property management companies. This has been delayed and will be re-visited during the next legislative session. This effort is long over due to protect homeowner's rights and their financial resources from questionable practices that have bankrupted many HOA's.

The solution to improving HOA legislation and homeowner rights is not more legislation. Future legislative efforts should be directed at modifying current law to include an out-of-court dispute resolution process such as binding arbitration/mediation. Until this change takes place no homeowner should assume their rights stated in State legislation or in their HOA governing documents are protected and enforceable.



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HOA Town Hall Meeting: September

At the request of State legislators who will be participating in the HOA Town Hall Meeting, we have rescheduled this event until September 2012. This will provide us more time to get the word out and work with the media on their attendance. We do have commitments from several State legislators to attend one or more HOA Town Hall Meetings. It has been indicated that our group will occupy one of the panel chairs for this meeting.

Please let your neighbors and others know of this meeting.

Visit our web site periodically to get updates. We will be sending out email updates as the time gets closer.

Contact the Media

You can be an effective advocate for HOA Legislative Reform. We provide information on the issues on our web site and suggestions on what legislative changes need to be made.

The Denver Post web site www.yourhub.com is a good place to start. Register and begin posting your comments via articles in the "Tell Your Story" section. Please mention our group/web site in each article. In your profile note you are a member of the Colorado HOA Forum. Yes, your articles will be read and maybe even featured on this site.

Voice your concern with the Trouble Shooter Tom Martino. Just call into KHOW radio (talk show) 303-713-8255 and voice your HOA concern or your personal HOA story.

HOA Donates \$10,000+, WHY?

Here's an example of a dysfunctional and out of control HOA Board. The Board members, on their own, donated over \$10,000 to a local arts group. Is this purpose of an HOA or is this taking advantage of one's position on the Board to spread a personal cause? Now they want to consider raising HOA fees due to deficient funding of HOA needs. This is all legal and makes a joke of the idea that HOA Boards "must" practice their trusting and fiduciary responsibilities with all homeowners in mind.

You might think you can stop this by taking the HOA Board to Court but forget about it. The Courts will most likely tell you that the homeowners were voted onto the Board and they have the right to make such decisions.

We had cases reported of similar manner where the Board was a majority "dog" owner and dog crazy bunch. They allocated thousands to build a dog area and install baggie and dog dropping containers when only 10-20% of the homeowners owned dogs. Other HOA maintenance was delayed for this minority usable effort. Wouldn't you think they would charge an HOA fee to the dog owners to fund this measure or impose some pet restrictions vs. burdening everyone with the cost to fund a few Board members "pet" project?

There is no accountability, really, in the manner in which HOA Boards spend your dollars. They get a few zealots that want to promote an issue, see the HOA funds as theirs to promote the cause, and you are stuck with the bill with no recourse or accountability on Board's part.



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HOA Elections Can Be Manipulated/Invalidated and Shut Out New Faces

The quick and easy answer provided by State legislators, lawyers, homeowners, and HOA Board members to correcting abusive HOA practices is to “simply” vote the bums out. Sorry, doesn’t work that easily and blame it on apathetic homeowners and manipulating elections by HOA Boards.

Eligible voters, whether in our political elections or in HOA’s, simply don’t exercise their right and duty to participate in government. In an HOA, it seems like folks only get involved and concerned about their Board members after it is too late: the HOA reserves are found to be inadequate to make necessary repairs, reckless spending has bankrupted the HOA, non-competitive contract awards are wasting HOA funds, and special interests within the community result in services to some and not others, added costs and/or loss of revenue.

Homeowners blindly trust their Board, don’t attend Board meetings, and dismiss “bad news” from homeowners who do get involved in HOA operations. Then there are the long term residents that vote on auto-pilot for the Board they treat in a parental manner: short of a Board member being a felon, they rubber stamp their vote year after year (particularly so in age restricted communities where folks dismiss any change/newcomers regardless of what is going on with the finances of the HOA). Exasperating the problem of elections in age restricted communities, long term residents can make up over 50 percent of homeowners and these are the folks that vote: slam-dunk win for the “lifer” Board members and apathetic voters get what they deserve.

Then there is an issue of control over HOA media and publications and conducting elections. Many HOA newsletters serve as cheer-leading tools for the current Board. These publications rarely cover problematic issues raised by homeowners such as financial irregularities, accusations or conflicts of interests

and favoritism, and challenges to the process of awarding contracts. Board meetings are often used to present a one-sided rosy scenario of operations with Board approved committee leaders reinforcing the “all-is-well” operating environment. Questions from the concerned homeowners to the Board are rarely taken seriously with answers “to be provided at a later time (meaning never)”. Board minutes of meetings are altered to present the current Board and HOA operations in the best light and negative comments or questions from homeowners left out or modified. Official HOA mailings to homeowners can present one side of the current state of operations favorable to the Board with counter opinion simply excluded. Yes this happens. Then there are rules within HOA’s prohibiting distribution of non-Board approved flyers/literature within the HOA. Homeowners are thus forced to use the U.S. mail which in such cases is less effective than hanging flyers on door knobs and is costly.

We have even received evidence from our members of elections that are invalidated when results are contrary to Board goals. Add to this irregular handling of proxy votes that are completed in favor of incumbents.

Other election problems exist but this should provide a sense of reality on how easy it is (or isn’t) to get new faces the Board. A solution would be to implement term limits for Board members when others are readily available to serve. We have no good solution to resolve voter apathy other than when a disaster strikes and awakes residents.

HOA’s simply reflect our general society on a micro level. Citizen activists who carry the load for the many need effective/enforceable laws to hold those in positions of power accountable for the benefit of all. Thus we need HOA legislative reform. Just the way it is.



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Another blow to out-of-court dispute resolution

Example, HB1068. This bill provides cemetery plot owners the right to access financial records of the non-profit cemetery they bought into to verify their fees are used to properly maintain plots. HB 1068 originally included provisions for an out of court dispute resolution process when such defined rights were denied: great! Guess what? Prior to its' approval verbiage was removed to preclude out of court solutions and thus has basically nullified this bill except for those who can pursue our costly legal system. Whether it's cemetery plot owners seeking their right to access financial records or HOA homeowners who want to exercise the same right, the powers that be ensure the only enforcement is our "pay-to-play" Court system that doesn't give a fair shake to ordinary folks. We aim to change this injustice!

Make Your Voice Heard, Get Involved

We ask all members to make their voices heard. We have no well-funded organization and need to rely on citizen involvement and voting. What we hear from every politician is that letters to your State representative are effective. Also, your comments sent to the Colorado HOA Information Office and Resource Center are registered and included in their annual report (not by name but by number and type of complaint). These efforts can easily be completed through our web site www.coloradohoaforum.com and only take a few minutes. Please do this if you haven't already and let them know your problem as well as the need for legislative reform that includes the issues on the front page of this newsletter.

Your attendance at the upcoming September 2012 HOA Town Hall Meeting is important. Please try to attend. We will keep you informed of the date, time, and place via email and on our web site.

We will complete an HOA issues survey of all State representatives during September and October and publish the results. Your home and your property/HOA rights have a direct impact on your life. We do advocate you vote for a State representative that supports our efforts.

We suggest you attend your HOA Board Meetings, as frustrating as that may be, and talk up your issues. We also encourage you to request access to your HOA financial records (this is your right) and complete a review of such operations. You don't have to be an accountant to review a check register to find out who is getting what money, request invoices for questionable disbursements, and review current contracts and get information about how they were competed. This doesn't take long and will provide comfort if you discover nothing questionable.

Request and Distribute Our Business Cards

If you would like to distribute our business cards to your neighbors or at your HOA meeting, make your request for cards via email to: coloradohoaforum@hotmail.com

Stay Out of Court

Our advice to settling HOA homeowner disputes is simple: avoid going to court. The courts are expensive, you will need a lawyer, they are litigious, and time consuming. The history of homeowners winning in court is very poor. If you have money to gamble and can hire a lawyer in pressing your complaint in court just be prepared to lose. Yes, we sound negative but have reason to be so. Just because your governing documents and State law support your case don't assume that justice in the Courts will support you: many have found the opposite.

Your HOA will use your HOA funds to defend the Board in court. If you lose you will end up paying your legal costs and theirs. If you win ask yourself if it was worth the cost of the case. Frankly, most homeowners simply can't afford to go to court, lay out up front costs of a thousand or more for a dispute of \$100-500 or concerning non-compliance by the Board with State law. Your HOA doesn't have to consider financial risk, its' not their money in the game. Then, any decision in your favor will probably be delayed in enforcement by the Board and you may have to go back to Court. In the end, no Board member will be held accountable?

If there was an out-of-court mandatory, binding mediation process that was inexpensive (less than a few hundred dollars) with no lawyers involved, we would suggest filing a complaint and go to mediation. Win or lose in this type of process you would at least get your day in court and it wouldn't cost very little to you and/or the HOA. Until this exists, be distrusting of justice in our courts. The reality is the present system of enforcement in HOA law makes the law basically unenforceable and lawyers happy.