

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. 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. Furthermore, oversight, qualifying and managing independent mediators makes the whole dispute resolution process more complex and prone to irregularities than having in-house, trained on DORA standards and managed staff. Additionally, home owners would benefit more by filing with the State for a minimal fee and getting closure on an issue than spending \$300-500+ with a mediator with uncertainty of an outcome (or any outcome settlement) thus making a filing fee a non-issue and making such a user fee acceptable.

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](#): In other words, an out of court solution. No action was taken on this report.

Colorado does provide an out of court dispute resolution process for home owner complaints related to HOA property management companies through the [State's HOA property management licensing law](#). (this program was ended in 2019 but not due to failure of the dispute resolution process). Home owners could file a complaint on-line, have it vetted, and if found to be substantive the State investigates the complaint and renders a decision. 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. Home owners could also opt for a court case using their own funds. Then in 2019 a law was passed providing home owners in mobile home and manufactured home communities with an out of

court dispute resolution process for their complaints with their landlords/management companies. The question is, if good enough for property manager complaints why not for HOA complaints?

In 2020 the State of Colorado completed a Sunset Review to determine and comment upon the continuation and mission of the State's HOA Office. In the study was the specific recommendation for a need for a dispute resolution process within the State HOA Office.

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 learning curve to implement this process would be very short as the State conducts similar processes for regulated professions and there is no need to deviate much from this working and successful system. The missing links to implementation is (other than passing a law) mostly enhancing and changing the application on filing complaints, hiring additional staff as needed, writing the specifics on system implementation and management and assigning vetted complaints to approved dispute resolution trained staff.

Funding a State 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 (\$33 per year) cover current State HOA Office expenses. Funding this new process: HOA complaint filing should carry some minimal fee, \$25-75, to reduce the number of frivolous inquiries. Other States charge a filing fee: Virginia \$25, Maryland \$50, Arizona \$500. HOA registration fee increase of no more than one-dollar per HOA household per year would be more than enough to fund the hiring of additional staff, technology, and overhead. There are approximately 8,000 registered HOAs that include upwards of 600-800,000 households. It can also be anticipated that in 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 saving millions of dollars and offsetting any increase in registration fees. The court system would save by decreasing the case load related to HOA litigation.

A summary of required resources to implement and ongoing costs: 5 additional staff (two administrative, 3 trained complaint resolution specialists) at \$70,000 each plus employer overhead/contributions of \$15,000 each: \$425,000 year. Technology enhancements, overhead and office equipment upgrades \$80,000. Total of approximately \$505,000 a year (liberally estimated). Given the 8,000 HOAs in the State the approximate increase in HOA registration fees would be no more than \$60-65 in year one and there after a reduction as start-up costs would not recur. This amounts to about eighty to eighty-five cents per household a year initially and less thereafter. Depending on complaint filing fees this assessment could be lessened. Note, since the Office already receives and records complaints these costs are

directed at the additional work in vetting, investigating and rendering decisions. This cost is many-fold returned in legal cost savings to home owners and HOAs and related relief in court caseloads: a great cost-benefit proposal. Registration fees should only be lessened as more new and existing HOAs are registered.

Note, the costs estimated are purposely liberal. For example, Virginia staffs its HOA Ombudsman Office that receives HOA general inquiries, receives home owner complaints, vets complaints for validity, investigates and renders decisions, conducts outreach and education to the public and works with the legislature on HOA issues with ONE person.

Out of court dispute resolution within the State Office meets the tests of providing 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 financial burden on HOAs or home owners; and will make all existing State HOA laws and HOA governing documents immediately effective from the home owner's perspective.