

Out of Court Binding Dispute Resolution to Resolve HOA vs Home Owner Disputes

HOA State laws and your HOA governing documents are very weak on enforcement from the home owner's perspective. Home owners get a reality wake-up call when attempting to enforce their rights when an HOA Board and/or HOA property management company violate the law and they only have our litigious, costly and time consuming court system to resolve the most simple problem. There must be a better way.

HOAs can be a great place to live with their available amenities, stability of neighborhoods, and enhanced property appreciation over those communities without an HOA. However, bring up the topic of HOAs and you will get heated discussion. Some folks wouldn't think of living in an HOA and others would not live in any other type of neighborhood. Much of the consternation about HOAs seems to focus on abusive practices of HOA Boards and property management companies and the inability of home owners to pursue their rights.

Unlike disputes between home owners and property management companies that can be filed with the State, investigated, and penalties issued for violations of the law, home owners must go to court to protest actions of their HOA. The court system simply doesn't work for HOA home owners in their disputes with HOA Boards and the reason couldn't be more obvious: this scenario matches the HOA's unlimited financial and legal resources against that of the home owner's limited resources. Therefore, most home owners, nearly all, can't afford the time or money of a court case to defend their rights as stated in State HOA Law and their own HOA governing documents and simply don't pursue enforcement.

All Colorado state HOA laws, and there are many, are missing any verbiage on enforcement from the home owner's perspective except "go to court". The sponsors of HOA legislation have placed into law many definitive and comprehensive laws defining HOA home owner's rights but they amount to not much more than administrative, ornamental, and "feel good" laws.

A 2013 State Study addressed enforcement and dispute resolution of HOA vs home owner complaints. Recommended was a proposal for an out of court binding dispute resolution process (aka alternative dispute resolution). Home owner files a complaint with the State, it is vetted, valid complaints are assigned to arbiters/legal review, cases litigated between parties, and a binding decision is rendered. Implementing the proposal is not complex and would cost taxpayers zero and HOA home owners nothing to at most less than fifty cents a year. The system can be paid for with a combination of HOA registration fees (that currently exist), complaint filing fees (for example \$50 to mitigate the number of frivolous filings that would otherwise be completed), and assigning legal review costs in part or whole to one of the litigants. Most of the components of this system are already funded and in place: the State HOA Office (that would manage the program), office space, computer equipment, web site, complaint filing system, processes to review and report on complaints, telephones, a Program Manager and front office person, and the experience in DORA (Department of Regulatory Agencies) to make any learning curve on implementation familiar and minor task. The new component/work would be to create the process to identify and assign legal review to complaints and oversee the litigation process. Similar

systems are in a half dozen other states and have proven effective. Restrictions on the type of filings and punitive actions would be present and the process would not involve investigation of felonies or fraud: the process would involve complaints concerning enforcing State HOA laws and an HOA's by-laws. This process would not preclude any home owner from choosing to take their issue to court.

Mediation is often touted as a cure-all for HOA vs home owner complaints and nothing can be further from the truth. This process requires the home owner to gamble \$350-500 on a mediation session with NO guarantee of an enforceable solution. If an agreement is reached either party can ignore it and that sends all back to court. Home owners simply can't afford to risk this type of money on a hope and prayer of an agreeable solution. Further, mediators are not a professional or licensed group and there is NO guarantee that your mediator will have any knowledge of Colorado State HOA laws. Yes, your lawn service person can sign up to be a mediator in your HOA mediation session. Also, if mediation worked for the past three decades as it has been recommended, the State's HOA Office would not have received thousands of complaints/inquiries in its' very brief life. Mediation simply adds time and cost to a home owner's complaint resolution and most of all it is a process characterized by the absence of "finality" which is not in the interest of all parties.

An out of court binding dispute resolution process would provide an accessible, affordable, and efficient venue for home owners to resolve their HOA complaints. A minor filing fee would be justified to mitigate frivolous complaints and help fund the program. This system levels the playing field between home owner and HOA as complaints are based strictly on HOA law/HOA governing documents and not a defendant's financial resources or lawyers. Decisions are enforceable and final. Home owners would still be able to opt for a court case instead of this process. This legal process would not be involved in felonies or any disputes involving financial claims in excess of Small Claims Courts amounts. The cases handled would strictly involve violations of State HOA law and an HOA's governing documents that are considered 90% of home owner issues. Punitive damages would mostly involve directly one party or the other to comply with State law or an HOA's governing documents. This process would further enhance accountability of HOA property management companies that due to weak and ill-defined accountability under the property management licensing law allow these companies to shield themselves behind the concept that problems are created by the HOA Board who directed them to violate laws.

Out of court binding dispute resolution under the control of the State's HOA Office would result in relieving case-loads on our court system without creating another government office or bureaucracy. The cases handled through this process don't belong in court nor should they require high expenditures by either the HOA or home owner. Monetary savings in legal costs would be realized to both home owner and HOA.

If an out of court venue is available for investigating HOA property management violations why aren't home owners provided a similar process for HOA home owner complaints? Implementing the subject process would immediately make all Colorado State HOA Laws effective as intended and improve upon HOA governance. Also refer to our [White Paper on implementing an out of court binding dispute resolution process within the State's HOA Office.](#)

