



Recommendation

OUT OF COURT BINDING DISPUTE RESOLUTION

Administered by the Dept of Regulatory Agencies, State HOA Office

START: HOMEOWNER DECIDES HOW TO FILE HOA COMPLAINT

COURT SYSTEM

Home owner chooses to take complaint through court system, decision in court, can appeal decision, and assumes assigned court costs

STATE HOA OFFICE

Home owner chooses to use State Managed Complaint Filing and Resolution Process, decision enforceable through Dept of Regulatory Agencies that manages the program within the State HOA Office, home owner files complaint on-line. Complaints involve violations of HOA governing documents and State HOA laws (not felonies or other criminal activity). Home owners must show evidence they attempted problem resolution through HOA process reaching no mutual agreement. This process is not for filing a complaint against the HOA management company.

Complaint reviewed by State HOA Office

Complaint not applicable to process, rejected

Complaint investigated by State HOA Office

Enforceable Decision Rendered

This process funded by HOA Registration fees and supplemented as needed by a complaint filing fee. A complaint filing fee would not only help fund the program but mitigate the number of frivolous. HOA registration fees could be used to fund at a rate of approximately \$1.25-1.50 per household per year. The HOA Office currently has the funded infrastructure to support this program: office space, on-line complaint filing system, data base system, experience in receiving, investigating and rendering decisions (DORA already completes these tasks), web site, etc. and the new resources would relate to those involved in investigating complaints. Cost savings in legal costs for both the HOA and home owners by avoiding court can be claimed to be upwards of a million dollars with additional savings in our court system by litigating these cases out of court. No new taxpayer funds required. This process would encourage both parties in the complaint to not use lawyers but to resolve issues among the home owner, HOA Board and as needed management company. The State process would focus on compliance with State HOA laws and HOA governing documents. Recovery of financial damages vs compliance would be referred to Small Claims or other courts as applicable. Felony actions would not be part of this system. This system would not require any costly and time consuming pre-processes such as formal mediation that mostly add time, process, cost and of course uncertainty to gaining a decision for the home owner: this cost to mediate can often exceed the benefit of pursuing one's rights (see discussion below)

This out of court binding dispute resolution process administered by the State: 1) avoids the weaknesses of indecision and lack of finality in a complaint process related to mandatory mediation 2) does not add time, cost, and process, and uncertainty to dispute resolution that are inherent in mediation 3) does not require a homeowner to chance their money on a costly mediation process of hundreds of dollars most can't

afford that can lead to no rendering of a decision or a decision not enforceable and/or a decision that due to non-compliance of one party ends up in a court action to enforce thus wasting home owner time and money 4) allows homeowners to avoid our costly, time consuming, and litigious court system as a sole source for HOA dispute resolution, 5) relieves our court system of case load and cost and trying cases that should otherwise be litigated out of court 6) unlike a mediation process that can result in a mediator without any knowledge of HOA law, legal skills, credible certification other than self-proclaimed or other relevant HOA training, the reviewing of a complaint within the State process will have oversight and involvement from those with HOA legal experience/knowledge 7) this process is affordable (low to no cost to the home owner to file a complaint) and accessible to all home owners. A 2013 State Study and Sunset Review Study 2019 suggests an out of court binding dispute resolution process. The fact that the State HOA Office has received thousands of complaints in its' brief history brings to notice a need for a workable dispute resolution process. NOTE: the State administers a home owner dispute resolution process for those in mobile home and manufactured home communities and previously for complaints by homeowners with the HOA management company and this process would be similar. Since this process doesn't involve a regulated business or licensing it is best administered separate from DORA regulatory resources and management and place within the State HOA Office.

Presented by: Colorado HOA Forum www.coloradohoaforum.com email: coloradohoaforum@gmail.com