

## Draft Proposal

### Proposal to Authorize and Empower the State HOA Office to create and administer an out of court binding dispute resolution process for HOA homeowner complaints with their HOA within the State HOA Office

Comments by the Colorado HOA Forum, [www.coloradohoaforum.com](http://www.coloradohoaforum.com)

#### Introduction and Overview:

A proposal to empower the State HOA Office to administer an out of court binding dispute resolution within the State HOA Office. The State has comprehensive and definitive HOA laws documented in the Colorado Common Interest Ownership Act (CCIOA). Each HOA has local governance policies reflecting CCIOA and the HOA local needs. A problem exists with the enforcement of these laws and directives in that there is no accessible, affordable and non-litigious venue for homeowners to enforce their rights under such laws, guidelines and rules. The only means of enforcement is through our costly, time consuming, mostly not understandable and litigious court system. Most homeowners can afford and thus forego their HOA homeowner rights. Colorado has a State HOA Office with no oversight of the HOA industry or any authority to investigate and render decisions on homeowner complaints. This proposal resolves mostly these issues.

Among this proposals main features: 1) dispute resolution will be self-funded 2) complaints will be limited as they pertain to CCIOA and HOA governing documents 3) filing a homeowner complaint will be low cost and not complex 4) the involvement of legal counsel will be very limited and hence the cost to process a complaint will be minimal and not be obstructive for a homeowner to pursue their rights 5) this will be a cost savings program saving the HOA and homeowner in legal costs and relieving the court system caseload 6) no financial burden will be imposed on any entity involved in the HOA industry 7) no requirement to create any new government entity as the State HOA Office will manage the program 8) government administration is kept simple with all funding generated through HOA registration fees which already exist, no complex agreements among government offices related to labor and technology, no complex plans on executing the program between offices, setting priorities and responding to change will be efficient and effective and completed by a central party (State HOA Office) 9) this program will be designed and developed for Colorado, by those who know Colorado HOA laws and governance and have experience with homeowner complaints: the State HOA Office. It will not be modeled or reconfigured from any other States program which can end up attempting to place a square peg into a round hole 10) homeowners will still be allowed the option to take their complaints to court and 11) this program places no additional financial or other responsibilities on Board members.

#### Proposal Details

This Bill authorizes the State HOA Office to design, develop, implement, maintain and manage an out of court binding dispute resolution process by expanding their mission by providing it with enforcement authority concerning compliance with HOA State laws and HOA governing documents by HOA Boards. The details below are highly important to erase ambiguities and mitigate any questions about administration of the process.

- 1) The State HOA Office (referred to in this document as the “Office”) will receive, review, classify, investigate and render decisions on HOA homeowner complaints. Complaints to be filed only by way of an on-line application by HOA homeowners. Exceptions are made to those with disabilities whereby the Office will provide personal assistance to homeowner. This process will only be in English the first year and available in Spanish during the second year. Consideration will be given to hiring staff to support a multi-language application.
- 2) The Office will design, develop, test and implement the software required to implement and maintain the system that includes complaint filing, tracking, status, and other software and hardware to support the system. The commercial market has software that can easily be modified and integrated into the total system.
- 3) The complaint filing system will be integrated with but not part of the existing HOA data collection systems such as the HOA registration process for reporting and analysis purposes. Consideration shall be given to converting the HOA registration application to the software used for complaint processing post-complaint processing implementation.
- 4) The system is designed for homeowners to file complaints pertaining to their HOA but not against any HOA property management company (PMC). Decisions rendered are with the HOA and no other third parties.
- 5) Complaints are limited in scope to alleged violations by an HOA of State HOA laws and an HOA’s governing documents and don’t involve recovery of financial damages or felonies. Homeowners seek decisions on enforcement of existing State HOA laws and governing documents along with enforcement mostly involving injunctive relief through the authority of the Office. The Office has authority to invoke other penalties as described in this document.
- 6) The Office can reject pursuing any homeowner complaint deemed to be outside their scope of authority, to be too complex for their undertaking or considered unsubstantiated based on the original filing. Any complaint rejected by the Office can be pursued by the homeowner through the court system.
- 7) A complaint received by and accepted for investigation can at any time at the option of the Office be considered too complex or costly to pursue unless the homeowner agrees to pay for the added/extraordinary costs. In such cases the Office will approach the homeowner concerning the extraordinary estimated costs and negotiate with the homeowner future actions and costs involved to render a decision as long as such costs don’t exceed \$2,000 and the homeowner agrees to pay a deposit in advance for such costs for the investigation prior to the Office proceeding with its work. In such cases, if the complaint is settled in favor of the homeowner such costs can only be recovered by the homeowner in Small Claims Court as the Office is not authorized to be involved in

directing the HOA to pay monetary damages or refund any homeowner optional expenses. If the homeowner doesn't approve the Office's offer they can take their complaint through the court system.

- 8) The Office will be empowered to render judgements and punitive action against an HOA that include: non-monetary penalties; injunctive relief; suspension of an HOA's ability to impose fines, special assessments, or foreclosures until corrective action is completed by the HOA; removal of a Board member(s). Repeated violations by an HOA can result in a directive for an individual or total Board to resign and a new election be held that excludes the previous Board member(s). The Office can seek court action to enforce their decisions.
- 9) This process will be operated and managed within the State HOA Office: all staff will be supervised by the Head of the Office; staff will receive training on HOA State law and gain a familiarity on how HOAs are managed and operated to allow for vetting of complaints and making decisions as to which complaints will be investigated. Investigators (not required to be lawyers) will conduct a review of case evidence, make an initial and follow-up contact with the HOA for comment/action to end disputes; investigators will suggest problem resolution to HOA Boards and with the Head of the Office but not render decisions; the Head of the HOA Office and other staff will render final decisions and inform the HOA of such decisions and penalty as applicable. All staff, office space, overhead, equipment and software and other Office expenses to be paid for by an annual assessment to each unit within an HOA supplemented by any funding sources received by the Office prior to this dispute resolution process being implemented.
- 10) The dispute resolution process will not utilize existing DORA software, hardware or processes but design, develop and implement their own technology and manage the Office through its own funding and staff. The processes and computer systems will not be hybrids or spinoffs of existing DORA systems. Existing Office applications will be integrated into Office core technology as needed.
- 11) The Office can instruct the HOA to cancel a violation, fee or other cost associated with the complaint if it rules in favor of the homeowner.
- 12) Attorney fees incurred by the HOA in a complaint that was ruled in favor of the HOA are not paid for by the homeowner until the notifications required to be sent to the homeowner have been exhausted as described in State law. The only fees reimbursable to the HOA relate to the cost to issue notifications with limits stated on such cost and the amount of the fine.
- 13) Homeowner complaints for HOAs created pre and post CCIOA can use this process
- 14) The Office staff education requirement pertains to office staff directly involved in the review, investigating and decision rendering components of this process.

- 15) Any legal fees incurred by an HOA in responding to Office requests for information will be paid for by the HOA and not charged to the homeowner. In the event the HOA is found to be in compliance they can't recover legal fees from the homeowner.
- 16) HOAs will report no less than semi-annually to their homeowners the number of complaints filed, accepted and decisions rendered and related legal costs incurred. This will not include who filed the complaint. This information can also be acquired by the homeowner or other entity through a process/application made available by the Office. This requirement of the HOA will be confirmed to have been completed with each yearly registration.
- 17) As part of HOA registration, the HOA agrees to abide by all State HOA laws, to participate in this dispute resolution process and to accept decisions rendered by the Office. An HOA refusing to register under the Office's registration policies can be subject to a court order to register and/or removal of Board members. HOAs will not be able to appeal an Office decision and neither will the homeowner.
- 18) A homeowner can file a complaint with the Office concerning non-registration of their HOA. The HOA can be directed to register by the Office.
- 19) The Office can not render a decision directly against the HOA's property management company (PMC). All HOA contracts with a PMC will indicate that any violations of State HOA law or an HOA's governing documents by the PMC can be pursued through HOA legal action for damages incurred by the HOA and by the homeowner in Small Claims or other appropriate venue.
- 20) HOA Boards are accountable for the actions of their PMC and all directives from the Office in a decision will be directed at the HOA that in turn will pursue any corrective action required of the PMC to cure the complaint.
- 21) A homeowner will continue to have the right to use the court system vs the State dispute resolution process to settle their HOA complaint. If the homeowner chooses to use the State HOA Office process they sacrifice the right to have their complaint heard in court or to appeal the ruling of the Office.
- 22) A complaint filing fee of \$35 will be assessed to the homeowner to file a complaint. No refund of this fee under any circumstances. The fee will be assessed to all complaint filings to discourage frivolous complaints. Fees are paid at the time of filing a complaint. The fee will be retained and used to pay for Office expenses. There will be no additional costs to the homeowner in processing their complaint through this system except as stated in this directive.
- 23) A homeowner is limited to 3 different complaints in any six month time-frame.

- 24) The Office will communicate and document all contacts with the HOA and such communication can be completed by telephone and/or email with no requirement to communicate by certified mail. All responses from the HOA to Office inquiries must be completed within seven work days. Communication between the HOA and Office will not require any in-person meetings unless requested by the HOA or Office. The HOA can utilize any resources it chooses in responding to Office investigations but the homeowner will not be required to reimburse the HOA for such costs.
- 25) The Office will be in a non-adversarial or partial capacity and will not provide any homeowner with legal defense. The Office can discuss homeowner rights under existing laws, how to file a complaint and the complaint process but not get involved in writing a homeowner complaint or offering their opinion on whether a complaint should be filed or not.
- 26) A homeowner can't repeat filing of the same complaint with the HOA Office within a twelve-month period.
- 27) An HOA and its homeowners can't participate in the Office dispute resolution process unless it is registered.
- 28) Funding for this program will require an initial assessment of no more than \$3.00 per home per year from each registered HOA. The Office will adjust this fee as needed after the second year in operation. HOAs will assess and collect this annual charge to homeowners within 60 days of this Bill's approval and thereafter upon the yearly HOA registration date. The fee will be collected and sent to DORA. All funds collected in the HOA registration process related to this program will be restricted for use in administering this program and accounted for and reported within the annual Office report to the legislature. Current funding of the Office for 2023 will remain unchanged. All expenses related to Office services, staffing, software purchases and development, office space and other overhead will be paid for through current funding provided to the Office for fiscal year 2023 and homeowner registration fees. No general funds from taxpayers will be used.
- 29) Upon approval of this program, the HOA Office will develop an implementation and financial plan within three months. Program start-up will be six months after approval of this program.
- 30) The HOA Office will develop an on-line complaint filing system that requires each complaint to include: the homeowner's name and contact information; name of the HOA and contact information; excerpts from a homeowner's governing documents or State HOA law that supports the complaint; explanation of complainant's contacts with HOA to resolve the problem supported by documentation; complainant must have communicated their complaint to the HOA prior to filing a complaint; indicate what

remedy the complainant seeks. This system would also provide for a process to track the history, documentation and status of complaints. The notification to the filer will also indicate that any extraordinary and unique expense that the Office will require to complete an investigation or render a decision will be assigned to the homeowner for the investigation to proceed or for a decision to be rendered. Such a fee is not reimbursable regardless of the outcome of the decision via the Office but can be recovered through the court system.

- 31) This system is not used to directly file a complaint against the HOA's property management company or against a specific Board member.
- 32) HOA's have five days to comply with Office decisions.
- 33) Confirmation of compliance with an Office complaint decision: the HOA and complainant will be notified of the decision and related penalties and cure date: if the HOA doesn't comply with the decision the Office will invoke all penalties and such penalties will remain until the HOA is in compliance; the HOA will inform the Office and the homeowner upon their compliance; and the homeowner will apprise the Office of compliance by the HOA. Compliance means fully complying and rectifying the violation and there will be no acceptance for partial or substantial compliance. If a cure date for the violation is not met the Office can apply additional penalties including removal of a Board member(s). An HOA with three or more outstanding violations (not cured after a decision) the Office will order a Board member(s) to resign and/or petition the HOA into receivership.
- 34) This system is not used to file a complaint against a specific Board member but only the HOA. This process will not impose any additional legal or financial liabilities on Board members.
- 35) This Office can't instruct an HOA to change its' governing documents or rules except in the case where there is conflict with State or Federal law. The Office can direct an HOA to update their governing documents and rules.
- 36) No individual Board member will be held personally or financially liable for any violation of State Law or an HOA's governing documents except in the case of fraud, misuse of HOA funds or criminal activity. The HOA, not the individual Board member is the accountable party in filing a complaint.
- 37) HOAs can't use this process for complaints against a homeowner.
- 38) The HOA Office will inform the public on the presence of this process and its' use utilizing their website, their outreach program, through legislators, training sessions, media stories and advertisements, and other methods as appropriate. The Office funds can be utilized to inform the public of the Office's existence and mission. HOAs will be required to apprise homeowners of this system twice each year by posting a bulletin written by

the HOA Office using their website, email, inclusion in their newsletter, posting of the community bulleting board or other means to ensure notification. No certified mail to each homeowner is required. The HOA Office will direct registered HOAs to notify homeowners and confirm as such via the registration process.

- 39) Personal information about the complainant is confidential including the name, address, telephone number. SSN information will not be required from a complaintant
- 40) The Office in its annual report to the legislature will include statistics on the number complaints files, types of complaints, complaints dismissed prior to being investigated, complaints investigated, cases settled, outstanding complaints, complaints settled in favor the HOA and homeowner, and other information deemed helpful by the Office.
- 41) All complaints will have a tracking number for use by homeowners in determining complaint status and for use in communication by the homeowner with the Office and the HOA.
- 42) The HOA Office is not to serve as a collection entity/agency and thus will not be involved in directing homeowners to pay any fines, fees or assessments but can render decisions as to the validity of such debt and if the HOA has complied with State mandates in collection actions. The Office can render a decision that involves canceling debt to the HOA.
- 43) All staff of the HOA Office must complete educational requirements that ensure they are familiar with HOA governance and laws. Requirements to be developed by the Office or in conjunction with a private firm to develop such educational material. Staff will not be required to be licensed on property management or as a Realtor.
- 44) There is no requirement that HOA Office staff who receive, review and investigate complaints to be lawyers, legal aids or have special training or certain credentials beyond that required by the Office. The Head of the HOA Office or designated person(s) rendering decisions will be required to hold legal credentials and/or skills, experience and knowledge of a level to execute decision rendering on complaints.
- 45) The HOA Office through its complaint process will accept, evaluate, investigate and render decision on the justification, legal authority, validity and reasonableness of HOA home sales transfer fees.
- 46) The Office will not get involved in disputes regarding construction defects, property boundary disputes or decisions and actions of local law authorities.
- 47) The Office doesn't have the authority to direct any insurance company or outside entity to complete an action but can direct the HOA to pursue certain actions with their insurance company or outside entity as needed in their investigative and decision rendering process. This is mainly completed when there is a need to identify accountability and financial responsibility for an incident.

- 48) The Office has the authority to cancel any fines or fees found to be contradictory to State law or an HOA's governing documents but can't direct the HOA to refund any fines paid: **recovery of funds already paid** by the homeowner to the HOA or in attorney fees is completed in Small Claims or other level court.
- 49) The Office can direct an HOA to end/delay foreclosure proceedings if it is found that the HOA violated State law related to billing and collection and notification mandates.
- 50) The Office can direct the HOA to extend a violation cure period on covenant enforcement on an exception basis or health or financial situation but not direct any HOA to cancel a justified fine or fee or other charge by the HOA to the homeowner
- 51) HOAs will not be able to appeal Office decisions on homeowner complaints with this caveat agreed to as a requirement in registering the HOA. HOA appeal will be considered completed in the HOAs response to the Office in the investigation stage.
- 52) The Office will not complete in-person or Zoom type conference calls except for unique cases.
- 53) The Office will restrict communications in this process to the complainant and HOA and will not respond directly to any lawyer requests or letters or from a management company.
- 54) The Office will accept similar complaints from homeowners belonging to the same HOA. Each complaint filed is independent of another HOA similar complaint with the option provided to the complainant(s) to file a consolidate complaint whereby one complaint can represent the concern of many.
- 55) This process serves homeowners living in HOAs and condominiums (time share properties to be included if it has an elected HOA Board of members)
- 56) The Office will require complainant personal identifying information sufficient to identify and communicate with the homeowner.
- 57) The Office will develop reports as needed.
- 58) The Office complaint form and requirements for data collection will be the responsibility of the HOA Office. The prerequisites to file a complaint will include: evidence the homeowner contacted the HOA for a hearing, that the HOA did or did not comply with State law concerning the complaint, provide evidence that CCIOA and/or the HOAs governing documents have been violated (excerpt from such law), provide emails or other documentation concerning the homeowner's requests for resolution and responses from the HOA and/or property management company, what the homeowner seeks as a solution.
- 59) The HOA Office will forward complaints and/or direct a complainant to another State Office if the complaint is outside of their jurisdiction such as issues with the Fair Housing Act or other State or Federal law.



- 60) Complaint filing fees will be required for each complaint with no exceptions and be no more than \$35 per complaint with no other add-on costs.
- 61) The HOA, in the event they are found to be in violation, is subject to paying any mailing, handling or correspondence costs that are not completed through the Office's system/process and any legal or other fees involved in enforcing a decision.
- 62) HOA homeowner complaint costs will be reported to homeowners at least semi-annually at a community meeting and made available on the HOA website.
- 63) Monetary fines assessed the HOA's management company such as that authorized in the event the management company will not provide HOA documentation to either an HOA Board or a homeowner as provided for under CCIOA or an HOA's governing documents in the amount of \$5,000 can be reviewed as a complaint submitted by either the homeowner or HOA to the Office for an opinion prior to taking action to collect the fine. The fine collected can include \$5,000 plus HOA attorney fees and is retained by the HOA.
- 64) All HOA homeowner complaints submitted to the HOA Office, HOA Board or HOA's property management company will remain anonymous and confidential as to the filer of the complaint.
- 65) CCIOA must have a defined statement concerning HOA responsibilities to homeowners and the community indicating a homeowner can file a complaint with HOA Office or in Small Claims Court (or in the State HOA Office upon the implementation of dispute resolution authority) concerning the maintenance responsibilities of the HOAs. The homeowner can file for injunctive relief to command the HOA to comply with this mandate which involves an HOA's Board and their fiduciary responsibilities and non-compliance with responsibilities mandated as part of the contract between homeowner and HOA. An HOA would be required by the court to develop a maintenance plan, raise the necessary funds through increasing HOA dues or special assessment. This includes all HOA maintenance of common property and that which impacts individual homeowners. Non-compliance with a court order can involve non-monetary penalties including removal of a Board member(s), placing the HOA into receivership and/or the inability for an HOA to foreclose on a home, place liens or impose fines.
- 66) The Office will limit, except in extraordinary cases, the practice of deferring to HOA Board judgement when the complaint clearly involves that stated in CCIOA or HOA governing documents or allow for limited, reasonable or substantial compliance by a Board when the violation is clearly stated in such law.