

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

Bill proposal for empowering the HOA Office to administer an out of court binding dispute resolution within the State HOA Office. Details are essential in this process else administering the program will be weakened and filled with loopholes. Note, this list can be shortened to consolidate similar items or delete items considered already part of State HOA laws but the content to be retained.

This DRAFT proposal and subsequent changes can be used in developing a legislative Bill.

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 enforcement authority concerning compliance with HOA State laws and HOA governing documents.

- 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. The complaint process will be in English in the first year and during the second year of existence make available the on-line application in Spanish. All other languages will be implemented by the Office as resources allow.
- 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.
- 3) The complaint filing system will be integrated with but not part of existing HOA data collection systems such as the HOA registration process for reporting and analysis purposes.
- 4) The system is designed for homeowners to file complaints pertaining to their HOA but not against any HOA property management company (PMC).
- 5) Complaints are limited in scope to alleged violations by an HOA of State HOA law and an HOA's governing documents and don't involve recovery of financial damages or felonies. Homeowners seek enforcement of existing laws and governing documents which the HOA Office will be empowered to enforce through its authority to invoke injunctive relief or other compliance directive or penalties described in this directive.
- 6) The Office can reject pursuing any complaint deemed to be outside their scope of authority or any complaint to be too complex for their undertaking. 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 too complex or costly to pursue. In such cases the Office will approach the homeowner concerning the extraordinary estimates costs and negotiate with the

homeowner future actions and costs involved to render a decision as long as such costs don't exceed \$1,000 and the homeowner agrees to pay for such costs for the investigation to continue. 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 funds.

- 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 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 designed, developed and implemented by the Office with its own funding and staff. The processes and computer systems will not be hybrids or spinoffs of existing DORA systems.
- 11) Any legal fees incurred by an HOA in responding to Office requests for information will be paid for by the HOA. In the event the HOA is found to be in compliance they can't recover legal fees from the homeowner..
- 12) 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.
- 13) 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.
- 14) 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.

- 15) 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.
- 16) 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.
- 17) A homeowner can't repeat filing of the same complaint with the HOA Office.
- 18) Funding for this program will require an assessment of \$2.00 per home per year from each registered HOA for the initial start-up year. 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 Bills 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. Services under this program will be limited to the collection of such funds.
- 19) 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 complainants contact 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.

- 20) This system is not used to directly file a complaint against the HOA's property management company.
- 21) The Office through its findings can direct the HOA to direct the management company to comply with HOA law or HOA governing documents and take, as necessary, action to ensure compliance or to cancel an HOA's contract with any property management company that is and has proven to be in violation of HOA or other laws.
- 22) HOA's have five days to comply with Office decisions.
- 23) 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.
- 24) This Office can't instruct an HOA to change its' governing documents except in the case where there is conflict with State or Federal law.
- 25) 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.
- 26) HOAs can't use this process for complaints against a homeowner.
- 27) The HOA Office will inform the public on the presence of this process and its' use utilizing their website, their outreach and training session and in reaching out to the media. Office funds can be utilized to inform the public of the Office's existence and mission. HOA 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.
- 28) 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.
- 29) 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.
- 30) 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.
- 31) 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 educated on property manager licensing.
- 32) There is no requirement that HOA Office staff who receive, review and investigate complaints 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.

- 33) The HOA Office through its complaint process will accept, evaluate, investigate and render decision on the validity and reasonableness of HOA home sales transfer fees.
- 34) The Office will not get involved in disputes regarding construction defects, property boundary disputes or decisions and actions of local law authorities.
- 35) The Office doesn't have the authority to direct any insurance company to any action.
- 36) 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 is completed in Small Claims or other level court.
- 37) 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.
- 38) The Office can direct the HOA to extend a violation cure period on covenant enforcement.
- 39) HOAs will not be able to appeal Office decisions on homeowner complaints with this caveat agreed to as a requirement in registering the HOA.