

A Guide to Refute Arguments Against Implementing

- 1) State HOA Office for Dispute Resolution
- 2) Developing a State HOA Data Repository
- 3) Updating HOA Registration Requirements

A second study completed by the State of Colorado in 2019 concerning HOA's (home owners associations) recommends the State implement an out of court binding dispute resolution process. Previous legislative attempts by HOA home owner's advocacy organizations have been killed by well-funded lobbyists of the legal and property management industry. There is plenty of evidence that HOA home owner complaints continue in abundance and go unresolved due to no affordable and accessible venue for dispute resolution. Thus home owner's rights under State law and HOA governing documents are mostly unenforceable from the home owner's perspective. Also, creating a State HOA data base for access and use by homeowners would mitigate homeowner complaints concerning this issue and also provide a data base for the analysis of the HOA industry in the State and for use by businesses, realtors and home buyers in pursuing their needs. Also, this would allow home sellers to provide prospective home buyers the mandated documents under DORA's Contract to Buy and Sell Real Estate (Section 7) whenever and as many times as needed at no cost and without delays and be assured such documents are complete and current.

The 2021 legislative session will consider a Bill to implement an out of court dispute resolution process and create a State HOA Data Repository. These two issues will be fought against by property management industry interests such as the CAI (Community Association Institute) and HOA lawyers: both have millions of dollars at stake with these issues. Let's look at the issues involved, specifics on how it could work and responses to the opponents of implementing this process. The arguments of special interests are presented followed by retort.

1. The deletion of dispute resolution from HB 20-1200 was because it was a bad idea or too costly to implement. **False** Three State studies recommend dispute resolution in the State HOA Office and DORA officials in the Sunset Review through their meticulous effort recommend this process in the Office. The need is also justified in the Sunset Review and other reports and documented by the thousands of inquiries received by the Office and consumer groups.
2. There is ample oversight and tools in the marketplace for homeowners to settle their complaints. **False** There is no organization that has taken on homeowner rights other than the Colorado HOA Forum for the past 25 years. There are organizations such as the Community Association Institute that sells educational classes and represents HOA lawyers and property managers but is not involved in dispute resolution solutions or reforms to enforce HOA governance from the homeowner's perspective. This group has also actively lobbied any reforms on fees and fines, transfer fees and dispute resolution.
3. A new Office or bureaucracy would have to be created to implement an out of court dispute resolution process within the State HOA Office: **False**. The State HOA Office already exists and already accepts, classifies and reports on home owner complaints. This process expands the Office's authority to investigate and render decisions as is recommended in three State Reports.

4. Taxpayer dollars would be required to implement: **False**. The system would be funded by HOA registration fees and supplemented by a reasonable-low cost complaint filing fee. A study on how to implement this system. The services provided would not be supplemented by taxpayer dollars but limited to the amount collected through registration fees with a cap of no more than \$2 in year one and \$1.75 a year thereafter per home. Year one would fund the extra expenses in implementation. Estimated homes in HOAs are between 600 – 750,000. Based on discussions with other states the costs of the program should go down not up as HOA compliance will tend to improve with this oversight program reducing the level of staff needed to review and investigate complaints.
5. The cost to HOAs and home owners would be burdensome: **False**. The increased cost to HOAs in registration fees would amount to less than \$1.75 per year but yield cost savings to HOAs and home owners by avoiding legal/court costs in the order of millions per year.
6. The State would be implementing a program in which it has no experience and the learning curve would be steep. **False**. DORA has decades of experience in managing dispute resolution processes for consumers related to regulated professions. It recently managed a similar process for HOA property manager complaints and currently handles home owner disputes for mobile home communities.
7. Home owners would give up legal rights: **False** Home owners would still be able to litigate any complaint in court.
8. There is no precedence in other States that would suggest this system would be successful: **False** State administered dispute resolution for home owner complaints has worked in several other States.
9. There is no evidence that home owners would benefit. **False** Home owners and their HOAs spend millions each year in legal costs that can be mitigated through an out of court process. Most home owner complaints are simple and based upon their HOAs governing documents and don't warrant a court case or require a lawyer or burdening our court system. Even the most-simple HOA court case can cost thousands of dollars and can be avoided by a State administered dispute resolution process.
10. It would be unclear as to the type of complaints to be handled by the State HOA Office: **False** The State process would only pertain to violations of State HOA law and HOA governing documents: no felonies or litigation involving monetary settlements. Nearly every complaint received by the State HOA Office can be resolved through this process. These cases are not litigious and a well- designed complaint filing process would weed out frivolous complaints.-The cost to set up the system, staff the Office, gain office space and develop the infrastructure will be excessive: **False** The State already has funded through HOA registration fees office space, computer systems, staff, web site, dispute filing system etc. with any additional costs paid for via HOA registration fees as previously mentioned. Implementation costs would mainly involve staff hiring and training, enhancing the existing complaint system and processes to support investigation and decision rendering.
11. There is no evidence home owner complaints are of a magnitude to warrant implementing a State system: **False** Since its' brief and mostly unknown existence, the State's HOA Office has received thousands of complaints; media including TV, newsprint, and radio feature HOA problems; two State studies have indicated a need; and legislators are contacted frequently about HOA violations. High numbers of complaints continue through 2019. This

is quite an impressive number of complaints for any issue but when an Office is basically unknown to the public these number can be considered alarming.

12. A dispute resolution process within DORA would be more costly than a court case or mediation (that mostly leads to a court case). **False** Most complaints are simple and easily and quickly litigated and based on State HOA law. Most cases are black and white and don't require legal counsel. The most simple court case can cost several thousand dollars and it is absurd to say this process (with at most a \$50-75 filing fee) would equal that of a court case. Mediation is a process that requires a homeowner to gamble \$400-500 or more to resolve a case and even when resolved a home owner may have to go to court to get enforcement: mediation add time and cost and is an uncertain process. Note, there are no credentials required for mediators in HOA cases and any history of experience would not be vetted/confirmed (this would be too costly) and your mediator could be anyone off the street. Mediation has been suggested in CCIOA for 20+ years and with homeowner complaints only gaining numbers this process has simply not worked. Requiring mediation prior to filing a complaint is a costly requirement on the homeowner and an HOA can also refuse to participate and more than likely when complaints come to this level of disparity the cost is simply a waste of homeowner money and extends the time to settlement.
13. A dispute resolution process handled by the HOA Office would require more staff than completing the process in another government agency or via mediators? **False** New and additional staffing would be required by any government entity. Training staff would be required under any scenario. Staff in the HOA Office would most certainly be less expensive than in another government ADR office that is normally staffed with lawyers and legal aides through the total process with hourly rates for the simplest complaint running at least \$100 in total and more an hour. Staff in the Office would be dedicated and up to date on latest concerns and events handled in the HOA community through their outreach programs, etc. Oversight of the process in one place with dedicated staff and central oversight of staff under the HOA Office is more effective and efficient and cost effective than splitting tasks among government entities. Mediators in any government office or private industry would be more costly and time consuming and there are not enough trained in HOA governance.
14. Home owners can use other more cost effective and efficient means to resolve HOA disputes than this proposed process or going to court: **False** First and foremost, they would if they could and no current process is affordable, accessible or effective or offered under the law. Mediation or using a State entity/agency cost more, takes more time, would be more difficult to manage and enforce standards and oversee the process.
15. Home owners would be prohibited from pursuing their complaint in court: **False.** Homeowners would initially decide whether to use the court system, State process or other means. If they use the State system and want to protest the outcome they would be free to do so.
16. Homeowners would overwhelm the State system with frivolous complaints. **Unknown but easily mitigated.** A well-designed State system can mitigate frivolous complaints with filing mandates: 1) a minor charge of \$50 or less to file 2) the complaint form/process would require the homeowner to specifically identify and support the violation by quoting the verbiage in their governing documents and/or State law 3) the homeowner would have to

document their attempts to resolve the issue with the Board 4) the homeowner would suggest the solution to their problem. This would place the burden of proof on the homeowner in an orderly and reasonable manner and aid the investigator and HOA in bringing about a conclusion to the complaint.

17. Mediation and the use of other State agencies are good alternatives **Mostly False** Problems with mediation have been previously mentioned. Also, a total process would have to be created using mediators outside the hire of the State Office that would ensure they have the proper knowledge and experience and to review their work to ensure they comply with State mandates and processes and are not inconsistent or free-lancing processes (this would cause further problems). Any designated processes outside the State Office adds time and complication to the homeowner's complaint process and any agreements by mediators would/should be reviewed by the Office adding more time and cost. Using State officials/entities outside the State HOA Office requires another level of coordination and confirmation of complying with intended standards in the complaint process and complicates the process for homeowners. It also would require homeowners to compete for resources available in such other State offices for HOA concerns. **The State HOA Office should provide all HOA related services** or the whole process becomes convoluted with those not primarily responsible for HOA issues getting involved with their independent opinions and processes. Think of this in terms of a situation whereby HOA education and registration handled by State HOA Office, another entity for filing complaints, another for State HOA data base: fragmented, bad for consumers and bad for developing standards and accountability.
18. The State HOA Office has no skill, knowledge or experience in HOA law or governance and working with HOAs. **False** The State has a State HOA Office fully versed on HOA law. No other State entity has this expertise. Other State entities may have experience in dispute resolution and legalese but not with HOA law and understanding the HOA experience.
19. The State has many definitive and comprehensive HOA laws setting forth homeowner's rights that are fairly, expeditiously and easily enforceable through our court system: **False** The court system matches the homeowner's limited legal and financial resources against the HOAs unlimited resources: a totally unlevel playing field. State laws have no mention of enforcement other than defaulting to our court system making most laws only administrative for reasons previously mentioned.
20. Using other State entities for dispute resolution is a good idea, expeditious and cost effective for the homeowner. **False** Other State entities would charge homeowners and HOA representatives up to \$75 an hour to investigate and mediate, too costly and would require homeowners to sift through the bureaucracy to find such an entity and complicate the lines of communication in the process and extend the time frame to resolve simple complaints.
21. Any State dispute resolution process would still require both HOA and homeowner to hire lawyers. **False** No lawyers would be required in a State process and homeowners would simply not need a lawyer as disputes are based on HOA governing documents and State law and not complex. Homeowners could choose to utilize the court system and hence a lawyer. The mandate would be for no legal counsel.

22. The use of an HOA Board within DORA to be staffed to make decisions on cases would be effective? **False** This would add a layer of unneeded bureaucracy and extend the processing time especially if this is not a full-time entity. Complaints are nearly all not continuous or complex and any Board most likely would not be familiar with HOA law or operations. Questions would arise and special interests interfere with staffing this entity. Issues that could be resolved in a day or two upon investigation and decision could take weeks when decisions had to be worked into a review Board. Not needed, adds cost and time.
23. An ombudsman, an official appointed to investigate individual's complaints, is needed. **False** This term is thrown around and if retained it could simply be the head of the HOA Office with decision making authority. All review and investigation is completed by staff with recommendations sent to Ombudsman for confirmation or other action.
24. Any decisions rendered by the State would not be legally enforceable. **False** Decisions and penalties assigned by the Department of Regulatory Agencies (DORA) in which the State HOA Office resides are enforceable. A previously managed dispute resolution process for complaints against property managers rendered enforcement and so will the newly enacted dispute resolution process for mobile home communities.
25. Complaints are complex and volume requiring investigation will overwhelm the system. **False** A State run process with trained vetting and investigative staff and a complaint filing system with prerequisites for filing a complaint (as mentioned in this document) will greatly reduce the number of complaints requiring investigation or decision rendering. This is because a trained staff of complaint reviewers will reject the frivolous as well as non-applicable complaints such as those related to property managers not handled in this process and complaints not supported by the law or governing documents. Investigators will also resolve problems prior to a need for decision rendering. Thus legal decisions and the burden on the Ombudsman or other person to make decisions will reduce volume over time and cost of the program.
26. A State dispute resolution process would dampen interest by homeowners to serve on their Board: **False** No additional responsibilities or vulnerabilities to financial liability would be involved. Board members already are protected through insurance coverage provided via the HOA. Penalties for Board non-compliance with governing documents would be a directive to comply and not involve suing any Board member.
27. A State system would be too complicated for home owners: **False** The State System would simply involve filling out an on-line complaint form and working with State officials in the investigation of any complaint. The process has been in effect for regulated professions, property manager complaints and will be used for complaints by home owners with their community management. Keeping the complaint process within the State HOA Office by itself makes the process uncomplicated: involving other unrelated agencies by definition would make it complicated.
28. HOA home owner's rights enforcement is a partisan issue: **False** Home owners are not Republican or Democrat, Liberal or Conservative but simply citizens of the State. This should be an issue that any legislator can support.
29. Implementing a State HOA data repository of HOA official documents would be too costly to HOAs: **False**. This would simply involve a file transfer to the State upon registration and

when such documents change and changes are very, very infrequent. The documents to be downloaded are identified in DORA's HOA real estate buy and sell requirements.

30. Should the State develop a separate and optional process that is available to HOAs to store their official documentation vs all HOAs required to download. **NO** First, exceptions cause confusion to HOAs and are difficult to administer. A fragmented and partial HOA data base would not be conducive to supporting analysis and research of the HOA industry that is currently lacking. Any partial and optional data base on HOAs would not be given much priority, consistency in process and storage requirements, lacking oversight and make access to such information through a computer application to meet homeowner and others data requirements predictably lacking. Almost all HOAs have documentation in electronic form and those that don't will not have any problems solved with an optional process to store on State data servers that they couldn't otherwise complete themselves. There should be a mandate that all HOAs have these documents in computer-based media.
31. The current HOA registration process is limited and not very useful to the public. Requiring HOAs to download all governing documents identified by DORA in the home closing process to the State HOA Office upon registering would not add any expense to the HOA more than what a file transfer costs (in other words not a measurable expense). These documents exist in HOAs and are paid for with HOA dues. The availability in a State data repository would allow for home sellers to inexpensively complete the home closing documentation tasks by themselves or via a private company to save hundreds of dollars and make valuable State wide HOA data available to home buyers, Realtors, businesses, housing authorities and others interested in understanding and analyzing the largest segment of housing in our State which is HOAs. Visit the coloradohoaforum.com web site for cost implementation and maintenance information, click on the Dispute Resolution icon
32. Requiring HOAs to download data to a State Data Repository is new and extra and costly work. **False**. HOAs currently download data to the State upon registration upon initial and renewals of registration. This would simply request more information and such information doesn't have to be created by the HOA, IT ALREADY EXISTS.
33. Keeping State records in sync with HOA records would be difficult: **False** The State already has requirements for businesses and other entities to download data and keep current with the State: taxing authorities, local governments, retail sales, etc. In fact, having this requirement would force HOAs to review their data base to meet the State requirement: a
34. easily send out reminders to HOAs to update their records and also ensure that their requirements with the State are complete and correct. When HOAs post data to their web site they would simply replicate the task and complete a no cost file transfer to the State: upon implementing this process it would become a routine task requiring no monetary investment or special skill set.
35. The cost to implement and manage a State HOA data repository will increase HOA dues and make it cost prohibitive. **False** The maximum cost to a homeowner to create a State HOA data repository in registration fees would initially be less than fifty cents (hardware and application development) and subsequent years less than twenty-five cents to maintain hardware and changes to applications supporting the effort.
36. Storing HOA documents on an existing state server would meet the needs of homeowners and other for access to such data? **False** The needs and requirements of homeowners and

others to use such data on a server dedicated to other applications and uses would be driven by their current business practices and not by homeowner requirements. Changes would be very time consuming and costly and any change would have to meet the model of that state agency and not tailored to deliver the unique needs of homeowners. Exemplary of this was the computer application used in property manager licensing that was never well accepted or very usable by the public.

37. Home owners could not save on home closing fees with a data repository. **False** A State HOA data repository that includes HOA documentation required to close (this already exists in the HOA) a home owner, Realtor or private HOA transfer fee company could complete this task for \$50-60 vs the \$350-500 and up to \$1,000 the HOA charges. Home owners and Realtors could complete in about every case this task at no cost. Additional savings in completing this task to meet Title Company documentation requirements can save home owners hundreds of dollars. Home owners currently spend \$10-12 million a year on this task.
38. State HOA Registration requiring the download of official HOA documents as defined in the Contract to Buy and Sell Real Estate and related funding through registration fees requires legislative action: **False** The State through DORA can mandate/define registration requirements and the registration fee is set to cover expenses incurred by the Office. This option is most expeditious but if DORA leaders will not complete then separate legislation is needed.
39. There is no precedent for home sellers or realtors to gain access and produce the official HOA documents required in a home sale by anyone other than the HOA's management company. **False** Homeowners are already authorized to access these documents anytime but the availability and process to do so is inconsistent and homeowners are led to believe by realtors and the HOA that the only official and acceptable means is via the management company. Next, private companies complete this service upon a homeowner's request and the HOA grants them access privileges to the documents for a fee AND management companies also use these companies to send the documents to the homeowner but in the process mark up the \$50-70 fee charged by the company to \$350+ they in turn charge the homeowner. The process for homeowners is not often known and they are led to believe the only current and accurate documents can only be obtained via the management company which is not true.
40. The cost for HOAs and their management companies or others maintaining HOA official documents would be burdensome if they had to transmit and maintain current copies for themselves and on the State data base. **False**
41. There would be increased liability to HOAs if homeowners assumed the documents they download for the home seller or others were official and current. **False** The HOA should have only one set of official documents and not keep two sets of books: one accurate and the other questionable. The management company is not liable as they are only releasing document information provided to them by the Board and they must consider it official and current and management companies are not responsible for updating such information but only recommending changes.
42. Management companies and/or HOAs would incur unreimbursed expenses if they had to complete a file transfer of documents to the State upon registration and updates. **False**

There are no measurable costs to complete a file transfer. The cost to keep the HOAs documents current is already in HOA operating costs and an added, insignificant step of transmitting records to the State is not measurable. Also, updates to HOA official documents are very, very infrequent to not at all over years thus the additional work effort to ensure State records sync with local HOA records is nil.

43. It would be too difficult to keep records from the HOA in sync with both the State and county **False** No more so or costly than keep the HOA and county records in sync and with this being a requirement upon annual registration and when updating an HOA's governing documents it would all be "push-button process" when updating an HOAs official records to download to the State: basically no effort or cost or complication. These records are rarely updated so upon initialization with the State the yearly update would catch any lapsed updates that may be in the county not the State or HOA records. With a requirement that HOAs not keep two sets of records, current and outdated but only one official set of documents at any one time, sync arguments are irrelevant.
44. It would be costly and chase away volunteers to serve on an HOA Board if they are required to take educational courses upon appointment. **False** The State already has ample educational material on its' web site so developing such information would be a minor task. This is not requiring any Board member to gain a license only a confirmation they read the educational material on the State site and it would specifically indicate that such a requirement doesn't increase a Board members legal or financial liability.
45. The registration process should include a requirement confirming all Board members have read the State educational materials required to serve as a Board member but this would be to labor intensive and costly **False** The educational material would be available to all HOAs at no additional cost and most of it already exists. The time read the material would be most likely less than a few hours, no testing.
46. It would require legislation to include a requirement with registering an HOA indicating Board members had to confirm they read the educational materials on the State HOA Office web site. **False** DORA can make this part of the registration process without legislative mandate but if they refuse then legislation is required.