

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 (prior to veto of this program) 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. Similarly, if one lives in a mobile home park/manufactured home community they can file a complaint with the State for resolution and avoid court.

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 leaving a court case the method for dispute resolution. 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. Our HOA laws are like having speeding laws with no fines or penalties.

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 for legal review, cases litigated between parties, and a binding decision is rendered. In any such system home owners could still opt to go to court thus no rights to a court trial are forfeited! Implementing the proposal is not complex and would cost taxpayers zero and HOA home owners nothing (after benefiting from cost savings from court cases) 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 \$50-75 to mitigate the number of frivolous filings), and optionally assigning legal review costs in part or whole to one of the litigants (but this is most likely not needed). 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 components/work would be to define and create the process, enhance telecommunications, web site, reporting and data processing capabilities and hire complaint review staff. Restrictions on the type of filings and punitive actions would be present and the process would not involve investigation of felonies or fraud or involve recovery of financial loss: the process would involve complaints concerning enforcing State HOA laws and an HOA's by-laws.

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. Mediation would also add complexity in managing third parties who would work independently vs having review and resolution under State control and procedures.

The concept of mandatory mediation is also a failure and should not be inserted into a State run process. Mandatory mediation is already mentioned in State law and HOA governing documents. This didn't lessen the number of outstanding or increased success in dispute resolution: no evidence exists to support this claim but evidence exists that it didn't work by the continued complaints received by the State HOA Office. Again, this suggested mandatory process only adds unnecessary costs to all in the most simple cases with NO certainty of resolution. It is a process that leads to prohibiting enforcement of rights and not encouraging pursuit of rights. If a home owner is required to pay \$300-500 for a mediator, whom the HOA may select, most likely the home owner will quit on pursuing their rights. The goodness in a State program is to make things simple, accessible and affordable and not costly, litigious and process oriented. This concept of mandatory mediation is a bad idea and a costly concept for home owners adding little to dispute resolution. If the State system can't be used until a home owner expends time and money on this mandated process then home owners will most certainly not pursue their rights. However, home owners should be able to demonstrate that they contacted the HOA for dispute resolution but a solution was elusive.

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. The State HOA Office would have limited authority in assigning injunctive relief for solutions. The cases handled would strictly involve violations of State HOA law and an HOA's governing documents. This system would allow for resolution of 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 with repeat violations by a Board and/or Board member resulting in removal of the violator(s).

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.

Implementing the subject process would immediately make all Colorado State HOA Laws effective as intended and improve upon HOA governance.