



DRAFT PROPOSAL

**PROPOSAL TO CREATE an HOA OUT OF COURT BINDING DISPUTE RESOLUTION (DR)
PROCESS WITHIN THE STATE HOA OFFICE FOR RESOLVING CONFLICTS AND
COMPLAINTS BETWEEN AN HOA HOMEOWNER AND THEIR HOA BOARD**

Developed by the Colorado HOA Forum

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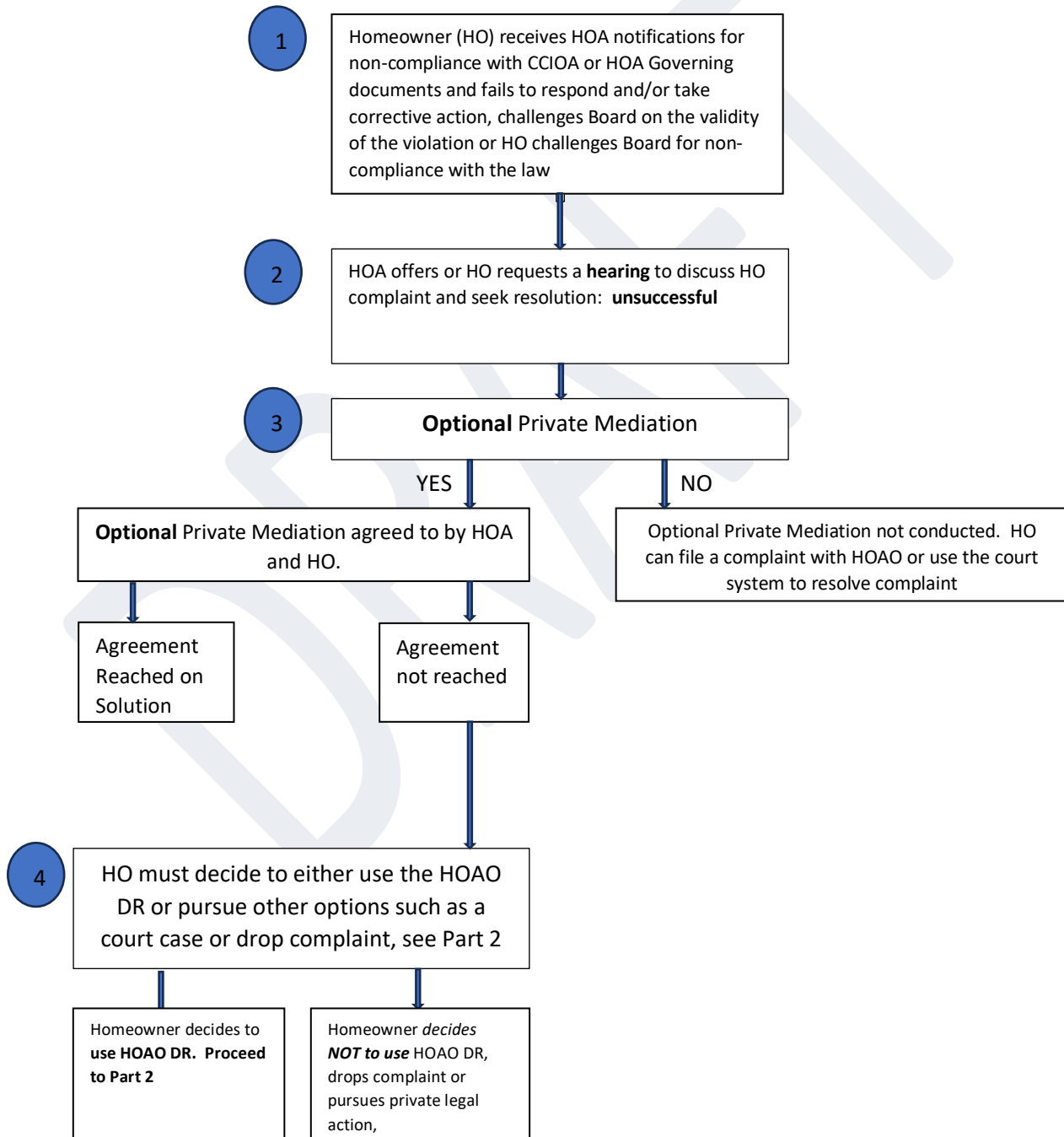
FLOWCHART: HOA OUT OF COURT BINDING DISPUTE RESOLUTION (DR) PART 1

Administered by the Dept of Regulatory Agencies (DORA), HOA Information and Resource Center
(aka State HOA Office (HOAO))

Developed by the Colorado HOA Forum

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Part 1: Prerequisites to filing a complaint with the State HOA Office (HOAO) Dispute Resolution (DR) System

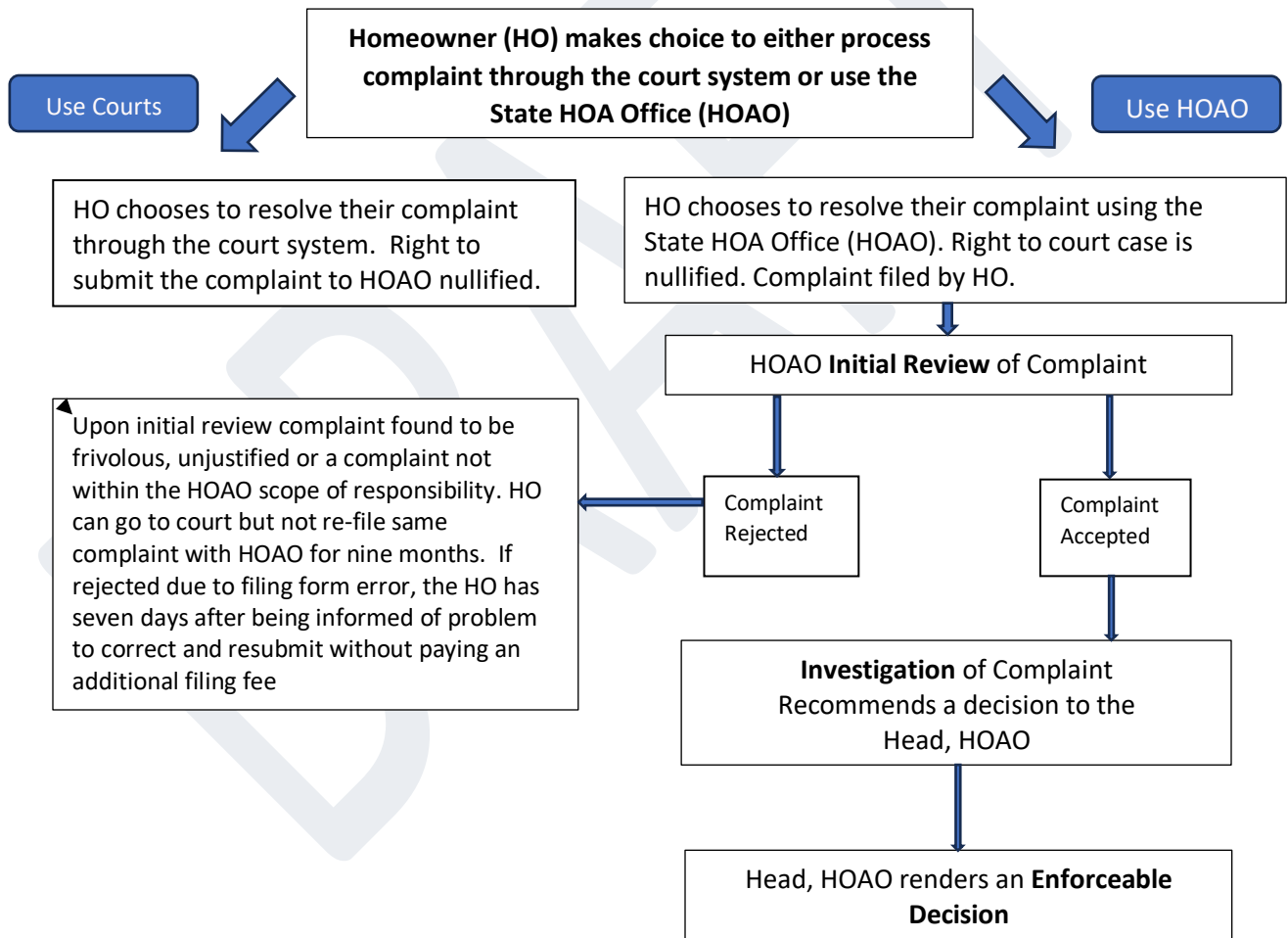


FLOWCHART: HOA OUT OF COURT BINDING DISPUTE RESOLUTION (DR) PART 2

PROPOSAL TO CREATE AN HOA HOMEOWNER'S OUT OF COURT BINDING DISPUTE RESOLUTION (DR) PROCESS WITHIN DORA IN THE HOA INFORMATION AND RESOURCE CENTER (aka STATE HOA Office (HOAO))

Developed by the Colorado HOA Forum

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Full details of this proposal are on the Colorado HOA Forum's website (home page, left column, "[Dispute Resolution](#)") and presented in this document. Information presented is content and requirements for subsequent use in writing a Bill.

DRAFT PROPOSAL

Introduction: This proposal is focused on developing and implementing a HO out of court binding dispute resolution process within the current HOA Information and Resource Center to investigate and render decisions on HO complaints with their HOA. This proposal doesn't involve HO complaints with HOA property management companies (aka Community Association Manager (CAM)), HOA attorneys, disputes between neighbors or HO complaints involving monetary judgements. The primary purpose is to investigate HO complaints about their HOA not complying with CCIOA or governing documents and rendering enforceable decisions on HO complaint. DR only applies to HO complaints and is not for use by an HOA to resolve issues.

Proposed Dispute (DR) Resolution Process within the State HOA Office (HOAO)

Overview: This proposal involves implementing an out of court binding dispute resolution process within the existing State HOA Information and Resource Center hereafter referred to as HOAO. The dispute resolution process involves the HO filing a complaint with the HOAO, having the HOAO investigate the complaint and gaining an enforceable decision. Absent an affordable and effective **enforcement** process for HO's to pursue their rights under State HOA law (CCIOA, Colorado Common Interest Ownership Act) and an HOA's governing documents (HOA Declaration of Covenants, Conditions, and Restrictions (CC&Rs), HOA by-laws, HOA rules and other HOA governing documents) this process will immediately make Colorado and HOA laws highly effective, reduce HO complaints and save HO and HOAs tens of millions in legal costs.

Colorado HOA governance is mostly a state issue. To implement a DR will require legislative approval. The legislature has passed many HOA Bills since CCIOA was implemented in 1992. However, CCIOA and every HOA legislative Bill passed over the past decades are missing the most important component of HOA governance: an affordable, accessible and expeditious enforcement process for complaints between an HO and the HOA related to an HOA's non-compliance with Colorado State HOA law (CCIOA) or HOA governing documents. This makes current HOA laws mostly unenforceable from the HO's perspective. Colorado's answer to ensuring HOA compliance has mostly been addressed by creating the State's HOA Office (current name "HOA Information and Resource Center" hereafter referred to as the HOAO). However, the HOAO has no investigative or enforcement authority on HO complaints. HOs and HOAs must resolve complaints in our costly court system that matches the limited resources of a homeowner against the unlimited legal and financial resources of the HOA. The result is most homeowners don't pursue their rights under HOA law.

This DR proposal is also a cost savings initiative for HOAs and HOs. This proposal describes a complaint resolution process that doesn't involve lawyers or the courts and hence results in major legal cost savings for HO and HOA's. This proposal doesn't impede a Boards authority to manage the community or place additional legal consequences to HOA Board members.

DR proposal, compared to other State DR's or similar systems: will cost significantly less to implement as Colorado already has an HOA Office; implementation mostly involves expanded authority of the HOAO; doesn't require a fiscal note as any additional funding will be gained from an HOA homeowner fee of \$3 per housing unit (condominium, townhomes, detached unit or single family homes) per year; will not require a new government Office within DORA; mostly doesn't involve attorneys or court cases; all DR responsibilities and funding needs are handled in one office (HOAO) without the need of panels, referees or Committees or outside resources; the complaint filing fee would be no more than \$35 which is hundreds of dollars less than other state DR's; the filing fee covers all facets of complaint processing including filing, review, investigation and gaining an enforceable verdict; filing fees are not refundable; penalties imposed by the HOAO on an HOA non-compliance with the law will not be monetary; the need for this process and expanding the authority of the HOAO is based upon state studies: Sunset Reviews and the Governor's HOA Task Force; mobile home park homeowners are afforded a venue for dispute resolution and this should be extended to HOA homeowners; this proposal doesn't require resources from other State offices (it is self-funded and managed) and intended to be a "one-stop-shopping" for homeowners.

Requirements:

All DR software, hardware and processes will build upon the existing HOAO resources. Software used to file a complaint, used in the investigation and decision rendering tasks, tracking HO complaints and other needs will be decided by the HOAO. Commercial products, including off the shelf software, purchased by the HOAO must allow for changes and maintenance to be completed by internal staff, reliance on a vendor minimized to mostly technical issues allowing the HOAO to operate without having to rely upon or coordinate system maintenance with other State or private entities.

HOA Registration and Educational Requirements: This proposal requires the HOAO to expand upon information collected through the HOA registration process towards a goal of creating a State HOA data base open to the public, realtors, home buyers, housing analyst and researchers, HOA homeowners and for itself. Expenses to implement to be paid via HOA registration fees: a one-time start-up fee of approximately forty-cents per housing unit and there after no more than twenty-five cents per year per home.

HOA Board members will be required to complete educational requirements as defined by the Head, HOAO. Board members will not be licensed.

The HOA registration process will be used to confirm: Board members have completed educational requirements defined by the HOAO within three months of taking office and each year thereafter at no cost to the HOA or Board member; course work is at no cost to the HOA; DR was presented to HOAs as part of a community meeting and through email yearly. The HOAO will develop an educational guide and standard email for HOAs to complete these tasks. The HOAO will develop a user guide to DR, distribute it to all HOAs, make it available to HOAs

and post it on the HOA website. The HOAO will develop an on-line form to receive HO, HOA and other suggestions.

Prerequisites to filing a complaint with the HOAO. Prior to the homeowner filing a complaint with the HOA Office: the HO will have received notifications, as detailed in CCIOA notification and collection policy; if the HO fails to comply or continues to protest the HOA notifications, the next step prior to filing a complaint with the HOAO is for the HOA to conduct grievance hearing in an attempt to gain resolution on the infraction or contemptuous claim of the HOA; the hearing must complete the offer of a hearing within 10 days of the last cure date missed as cited in the notification; no court action by either the HOA or HO can take place until the hearing is completed; if the HOA hearing yields no solution and before a HO files a complaint with the HOAO an optional private mediation session can be held as agreed to between the HO and HOAO; refusal by the HOA or HOAO to participate in optional mediation will not be used as evidence in DR; if no solution is achieved during the optional mediation session the HO has 10 days to file their complaint with the HOAO; if the HO doesn't file their complaint with the HOAO within the allotted timeframe, the HOA can proceed with legal action such as filing a court case. The HO can request from the HOAO an extension of the 10-day filing deadline if the HOA hasn't received a court date on any action related to the HO complaint. If a HO misses the HOAO extended filing deadline the HO ability to use the DR is forfeited. These steps are mandatory.

The current name of the State government entity that is focused on HOA issues is the "HOA Information and Resource Center". Change the name to "Colorado State HOA Office" or "State HOA Office". New name would be more "connecting" to HOA homeowners, HOAs and the public.

The current **HOA Information and Resource Center is mostly unknown** to the public and the mission and authority of this office is mostly and totally misunderstood. The Office does complete outreach, educational seminars and has a comprehensive website. The HOAO will include advertising expenses in developing their budget.

HOs must site HOA laws in their complaint as supporting evidence in order to get their claim accepted. The homeowner can submit other evidence to be considered in vetting and investigating the complaint.

The HOAO will complete an audit of their cash accounts no less than every six months. The audit can be completed by State personnel or an outside accounting business. Complaint filing fee income will be accounted for separate from HOA registration fees or other income.

The Head of HOAO will develop a user guide to DR.

The HOAO on-line system will allow for HO inquiries on the status and history of a complaint.

A telephone complaint HELP line and an email HELP address will be created for general inquiries. All complaints assigned a tracking number.

A homeowner can agree to participate in an **optional** mediation session after their hearing with the HOA and prior to filing a complaint with the HOAO. Optional mediation must be completed within 30 days after the HOA hearing session. In the event the HO has filed their HOAO complaint but wants to participate in the optional mediation, they can request a stay from the HOAO on their complaint processing of up to 30 days to complete this optional session. If agreement is reached in the optional mediation, it would cancel the HOAO complaint upon notification from the employee.

Enforcement of an HOAO decision is the responsibility of the HOAO. Enforcement can involve an injunction, penalties, issuing a summons or other methods approved by Head HOAO.

Any legal costs expended by either the homeowner or HOA related to a hearing conducted by the HOA, incurred by the HOA in preparation to defend itself at an HO hearing or mediation session or in preparation of a complaint will be the responsibility of the HOA or HO unless the parties come to a separate agreement on this issue. No HOAO verdict will include the award of attorney fees.

HOAO investigations can only be completed as a result of a homeowner complaint. The DR is not for use by HOAs or others to file complaints against a homeowner.

The HOAO will avoid verdicts that allow for partial compliance or be settled by invoking the “best business judgement” rule to avoid total or no compliance by the HOA.

The Office will not accept complaints that involve recovery of monetary amounts (this can be settled through the court system); the HOAO can accept complaints related to charges/billings that have been billed but not paid by the HO. The Head of the HOAO will determine what cases are accepted or rejected.

Complaint documentation/records compiled by the HOAO are open to the public except for personal information or other Privacy Act restrictions. Document retention is 5 years.

Homeowners can't file a similar or identical complaint with the HOAO within nine months of filing the original complaint. The Office can reject a complaint during initial review or investigation if it is frivolous or not supported by CCIOA or the governing documents and/or would be too costly for the Office to pursue or other reason determine by Head, HOAO.

The right of a HO to pursue a court case or to seek monetary damages in court is not eliminated under DR. The HO chooses the DR venue. An HOA Board would continue to have the right to pursue a court action against a HO when the HOAO finds the complaint in favor of the HOA. A verdict by the HOAO can't be appealed and negates any court ruling.

If a HO's complaint is not filed with the HOAO within the timeframe allowed, 30 days after the HOA hearing, the ability of the HO to use HOAO DR is prohibited. If the complaint has been

filed with the HOAO, it would preclude the HOA from filing a lawsuit related to the HO complaint until the HOAO renders a decision. If the HOA files a law suit related to the complaint and prior to 30 days after the HOA hearing, the HOA court case is invalid.

Some complaints can be considered too complex or expensive to process and can be rejected but the HO could still pursue a court or other action.

HOA homeowner complaints are against an HOA Board and not an individual Board member. Board member legal accountability will not increase with this DR. HOA Board violations and the HOAO process will not inhibit an HOA from enforcing covenants nor will it increase HOA operational costs (in fact it is a cost savings initiative that will avoid legal costs).

Complaints will not involve the recovery of HO funds but can involve HOA fees and fines assigned to a HO that haven't been paid. The DR can result in the cancelation of a fee or fine. Recovery/refund of monies paid by the HO to the HOA or other entity can be completed through a court action by the HO but not through the DR

HOA complaint fees are not refundable. Re-filing the same complaint within 9 months will be considered a new complaint and require a filing fee.

The Office will complete processing of a complaint within 10 business days of receipt unless extraordinary events or health/safety issues require longer.

The Office can (when there is a complaint concerning a cure period) direct the HOA to extend a violation cure period on covenant enforcement on an exception basis if it doesn't affect the health and safety of the community or impacts/harms the financial situation of the HOA.

HOAs will not be able to appeal HOA decisions.

The Office can direct an HOA to end/delay foreclosure proceedings if it is found that the HOA violated State law.

The Office will not get involved in individual disputes regarding construction defects issues, property boundary disputes (unless the encroachment is more than six inches or decisions and actions of local law authorities, construction defect litigation or issues with the police or local zoning violations. The Head, HOAO will determine a list of HO complaints they process.

The HOAO office will accept HO complaints involving a non-responsive HOA (does not respond to a homeowner inquiry, complaint or request for information). A penalty can be imposed by the HOAO on the HOA for not responding.

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 contracts with vendors including the HOA property management company.

If a HO complaint is found to be unjustified, the HOA can proceed with legal action.

The Office in its annual report to the legislature will present statistics and other information on DR.

The HOAO will have 10 days from receipt of complaint to render a decision.

The HOA Office will not direct a HO to pay any fines, fees or assessments but can render decisions as to the validity of such assessments. The Office will not be involved in collection activities. The Office can direct the HOA to cancel a fine, fee or other financial assessment if it hasn't been paid by the HO.

Filing a complaint with the State HOAO will not require any prerequisite court action or mediation session other than a hearing with the HOA Board.

HOA or HO attorneys will have no direct involvement with the HOAO unless requested by the HOAO. Their attendance at an optional mediation session or at the HOA hearing must be agreed to between the HOA and HO including how expenses will be handled.

Compliance by the HOA with an HOAO verdict will be completed within seven days after the HOA is notified of a verdict. The HOA can request a stay for compliance with the HOAO. The additional penalties can be assessed the HOA for not complying with an HOAO verdict.

A homeowner can file a complaint against the HOA when their HOA property management company violates terms of their contract with the HOA or violates CCIOA or HOA governing documents. The complaint will be filed by the HO against the HOA for not fulfilling their fiduciary responsibilities in managing the contract and/or ignoring health and safety issues related to such a contract. A complaint against an HOA related to a CAMs participation in a violation can result in a penalty against the HOA.

A homeowner can file a complaint with the Office concerning non-registration of their HOA. The HOAO can direct the HOA to register and impose a penalty as applicable.

As part of HOA registration, the HOA agrees to abide by all State HOA laws, to participate in this dispute resolution process (pre-complaint hearing and DR) 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, penalties and/or removal of Board members. HOAs will not be able to appeal an Office decision and neither will the homeowner.

The State HOA Office will have access to all HOA Board members and records during the DR process. Failure of a Board member(s) to respond to an HOAO request within 3 days of the request will result in a penalty(s) to the HOA.

If a complaint involves a **SLAPP law suit/threatening letter** this qualifies for complaint processing under DR. The HOAO can direct the HOA to end such activity/behavior and to take action to cancel/remove the letter from any court or other government data base. The HOAO can instruct the HOA to notify the homeowner that the SLAPP and/or threatening letter were not appropriate and will remove them from files and notify the HOA attorney that such actions by

the HOA can lead to penalties being imposed by the HOAO. A complaint involving a SLAPP suit (A Strategic Lawsuit Against Public Participation (SLAPP) aimed to intimidate, silence, or censor critics and will be considered illegal in this proposal and the HOA will receive a penalty for non-compliance. SLAPP suits are also known as intimidation lawsuits or strategic litigation against public participation. HB19-1324, Anti-SLAPP Suit addresses dismissal of SLAPP suits.

The Office can receive and process homeowner complaints involving Americans with Disabilities Act and Fair Housing laws as defined by the Head, HOAO.

HOAO verdicts can't be appealed or overridden by a court case except in extraordinary situations.

The HOAO will not act in an attorney capacity to advise HOs on the law or whether their complaint is better litigated in court but can inform HOs about where and how to find information on HOA law.

The HOAO will accept HO requests to place the HOA into receivership

HOAO will continue its current responsibilities and mission including maintaining its information and educational website, community outreach programs, HOA registration and issuing yearly reports.

The HOAO will create a process to communicate with HOs on DR once every six months. This can be completed via a Zoom call or other means.

Home buyers will be provided with a copy of the DR dispute resolution process.

HOAO has the authority to create a Colorado Western Slope Satellite Office for DR and that Office would be paid for with the same fee imposed on homeowners of \$3 per year.

This proposal applies to all CIC's/HOAs/Condominiums with an active HOA. Every HOA within six months of passage of this proposal will update their HOA governing documents, post a notification of the new DR on the HOA's website and send a notification to all HOs about DR. The HOAO will develop a standard notification for this process.

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