

## Draft Proposal

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

Comments by the Colorado HOA Forum, [www.coloradohoaforum.com](http://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 countered with those seeking loopholes and resistance. Note, this list will be shortened to consolidate similar items or delete items considered already part of State HOA laws.**

**Proposed Content of a Dispute Resolution Bill: this is a DRAFT proposal whereby grammatical changes may be required but the content of each item is critical to implement this process.**

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, and HOA homeowner complaints and render decisions on such complaints. Such complaints to be filed only by way of an on-line application by HOA homeowners.
- 2) The complaints are limited in scope to violations by an HOA of State HOA law and an HOA's governing documents and don't involve recovery of financial damages or felonies. Any complaint deemed by DORA to be outside this scope or overly complex requiring a court action or other reason for which the Office deems the complaint to be inappropriate for their mission can be rejected by the State HOA Office.
- 3) A complaint received by the Office that involves extraordinary or special costs not exceeding \$1,000 will only be pursued if the homeowner agrees to pay such costs. This includes special mailing and handling costs and investigative work not ordinarily incurred by the Office but will not include costs incurred by the Office to pay for any legal services outside the Office. Excessive investigative costs can be reason for the Office to render a non-decision on the complaint and thus the homeowner would be directed to the court system with any legal action. If the homeowner 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.
- 4) The Office will be empowered to render judgements and punitive action against an HOA that are not monetary including injunctive relief; suspension of an HOA's ability to impose fines, special assessments, foreclosures until corrective action is completed; and other means considered punitive to an HOA in managing their community. 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.
- 5) 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.

- 6) The Office will design, develop and implement a system specifically for HOA complaints, utilize its own computer equipment and software and develop its own practices to ensure the unique requirements of this process are easy to use, easily understood and included and that changes to the process can be quickly responded to by those managing the system and to ensure all costs associated with the program are accounted for and mitigated.
- 7) This process would not allow for HOAs or other entities to recover legal expenses from homeowner complainants.
- 8) 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. Any HOA not registering with the Office will result in all its homeowners not being eligible to use this dispute resolution process and will be required to notify all homeowners of the ramification of their not registering and an explanation of why they are not registering and the cost to register their HOA.
- 9) A homeowner can file a complaint with the Office concerning non-registration of their HOA in order for homeowners to gain access to dispute resolution with the Office.
- 10) 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 appeal the ruling of the Office.
- 11) A complaint filing fee of \$50 or less will be assessed to the homeowner. No refund of this fee. 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 used to pay for Office expenses. There will be no additional costs to the homeowner in processing their complaint through this system.
- 12) A homeowner can't repeatedly file the same complaint with the HOA Office.
- 13) 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. HOAs will assess and collect this annual charge within 60 days of this Bills approval and in subsequent years. The fee will be collected as part of the registration fee. 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..
- 14) Expenses to operate this system will not exceed the funds currently allocated in 2022 to operate the Office plus the annual assessment per home per year.
- 15) 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.

- 16) The homeowner agrees to accept the judgement of the HOA Office and not pursue the complaint in court as agreed to in the pre-complaint filing process instructions.
- 17) This system is not used to directly file a complaint against the HOA's property management company.
- 18) 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.
- 19) An HOA remaining in non-compliance with a decision rendered by the Office will result in its homeowners not being able to use this process along with any other punitive action(s) available to the Office. HOA compliance with an Office directive must be completed within five days.
- 20) 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.
- 21) 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.
- 22) The HOA Office in its decision rendering authority can invoke injunction relief upon an HOA, deny the ability to impose a lien or foreclose on any properties, remove Board members, direct the HOA to hold an election, direct an HOA to change governing documents that conflict with CCIOA of Federal laws, direct an HOA to direct its' property management company to comply with the law and/or to seek out another management company in the event of such companies refusal to comply or other non-monetary penalties.
- 23) HOAs are required to respond to all requests for information within seven days or be subject to penalties defined in this law.
- 24) The HOA Office will correspond with the HOA Board in problem resolution via email, certified mail, USPS or other postal system, or telephone and conduct in person meetings as necessary.
- 25) If an HOA uses legal counsel they can not be reimbursed for such costs from the homeowner nor can legal entities pursue collection against the homeowner.
- 26) 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 other criminal activity. The HOA, not the individual Board member is the accountable party. No Board member can be personally sued for a violation.
- 27) HOAs will not use this process for complaints against a homeowner.
- 28) 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. 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.
- 29) The HOA registration data base will be integrated with this system to facilitate and expedite investigative work such as validating that an HOA is registered, gaining HOA contact information and other information that an investigator deems helpful.
- 30) The Office in its annual report to the legislature will includes statistics on the number complaints files, 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.

- 31) The Office will classify all complaints by type to aid in analysis and reporting.
- 32) 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.
- 33) The HOA Office will be empowered to invoke injunctive relief in its' dispute decisions.
- 34) Homeowner complaints can't be directly filed against the HOA's property management company (PMC). However, if the HOA management company is involved with or knowledgeable of a conflict/violation of HOA governing documents and is involved in any manner with a complaint involving a violation of State HOA law, HOA governing documents or not complying with their contract with the HOA, the homeowner can file a complaint against the Board asking for the HOA Board to direct the management company to become compliant. The Office thus can through directing the Board to take such action ensure accountability for violations by a management company are not shielded due to inaction by a Board that would otherwise allow such company to ignore and escape any responsibility under State law compliance. The Office in its' dispute resolution authority can consider an HOA property management company equally accountable in complying with the law the same as required by the HOA Board and enforce such responsibility through directing the Board to take action to ensure such is accomplished.
- 35) HOA's, as part of their registration process, acknowledge the authority of the HOA Office to administer this program and accept the judgements of the Office and their ability to appeal such decisions in court are revoked.
- 36) 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 or fees or assessments. The Office can get involved in this issue relating to compliance with HOA governing documents and State law including complaints of the HOA not following their own collection and notification procedures and that presented in CCIOA.
- 37) The HOA Office has the discretion to deny a complaint if it deems it to be outside their jurisdiction/authority or not supported by State law or an HOA's governing documents.
- 38) 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.
- 39) 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.
- 40) The HOA Office has at its discretion the ability to not pursue any complaint but in such a situation the homeowner can take the complaint through the court system.
- 41) The HOA Office through its complaint process will accept, evaluate, investigate and render decision on HOA home sales transfer fees as to the fee being excessive, in compliance with the law, if they represent duplicate charging for services already paid for through HOA assessments, or that such fees charged to Title Companies and hence the homeowner are appropriate.
- 42) The Office will not get involved in disputes regarding construction defects.
- 43) The Office doesn't have the authority to direct any insurance company to any action.

- 44) As part of the authority of the HOA Office to make and enforce judgements, it can direct the HOA to require their management company to comply with all State laws and HOA governing documents and require the HOA to pursue legal action for violations.
- 45) 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.
- 46) The Office can direct an HOA to end/delay foreclosure proceedings if it is found that the HOA violated State law.
- 47) The Office can direct the HOA to extend a violation cure period.
- 48) HOAs will not be able to appeal Office decisions on homeowner complaints with this caveat agreed to as a requirement in registering the HOA.
- 49) This process doesn't preclude an HOA from pursuing any fines and fee and collection efforts that are in accordance with State law or an HOAs governing documents.
- 50) The State HOA Registration payment process will be the means by which HOAs collect the annual HOA dispute resolution process fee. The HOA will apprise all homeowners through a bulletin distribution, email or other personal means of the requirement to collect the annual fee and include a statement that apprises homeowners of the Office's website to file complaints. The statement will indicate that the State dispute resolution process doesn't replace the requirement that homeowners must take the initiative and document their activities to resolve the issue with their HOA Board prior to filing a complaint with the State HOA Office.
- 51) The Office will include in its' annual report to the State legislature statistics on the number of complaints received and categorized as to type, complaints rejected and investigated, average turnaround time from complaint received to settlement, complaints settled and types of punitive actions in settlements, number of complaints settled in favor of the HOA and the homeowner, identify by HOA name and location the number of complaints that were settled through the Office and comment on the adequacy of staff and funding for the program