



DRAFT PROPOSAL

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

Developed by the Colorado HOA Forum

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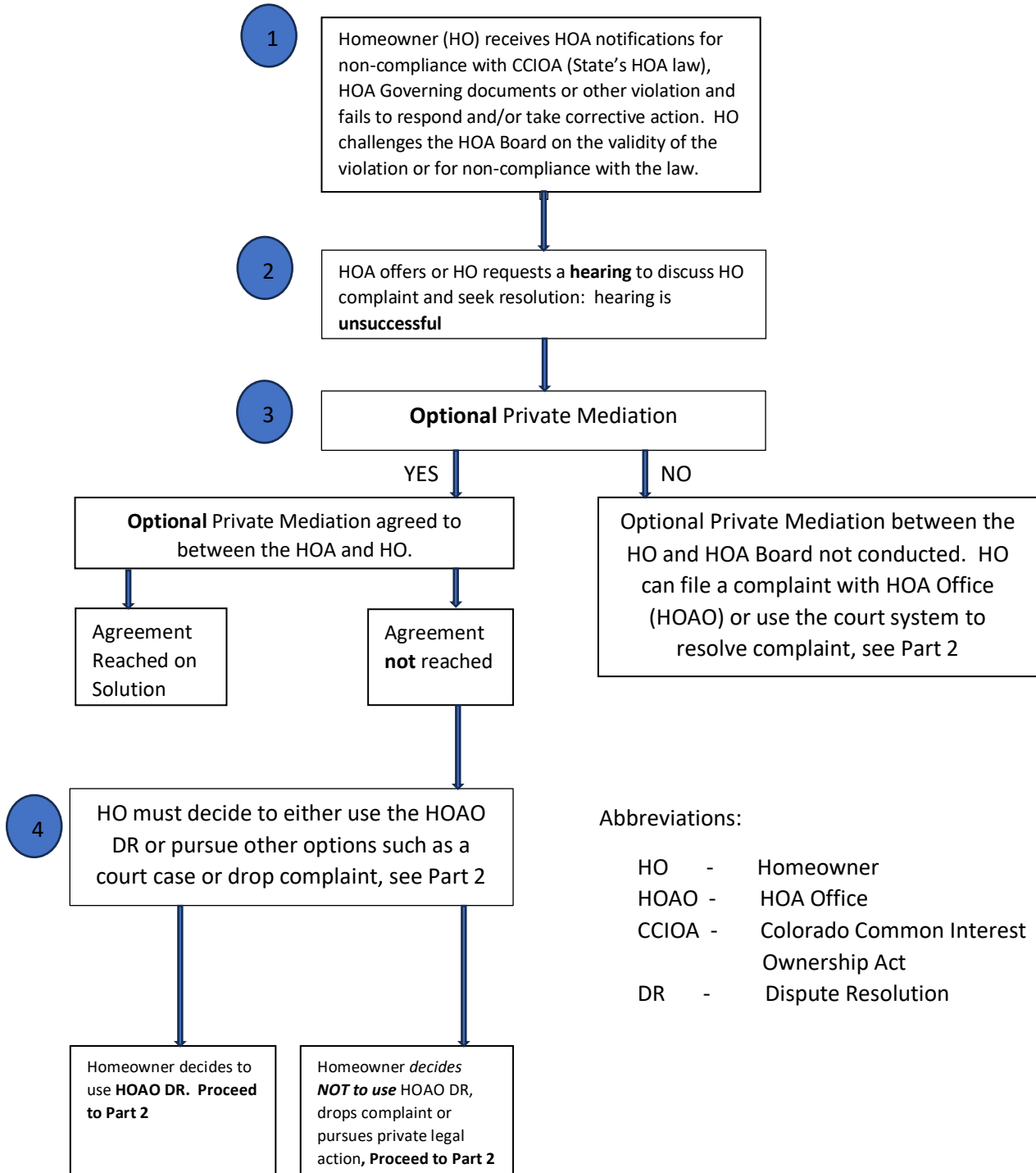


HOA OUT OF COURT BINDING DISPUTE RESOLUTION (DR) PART 1

Resolving complaints between an HOA homeowner and their HOA Board

Developed by the Colorado HOA Forum
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Part 1: Prerequisites to filing a complaint with the State’s HOA Information and Resource Center’s Dispute Resolution (DR) process.



Abbreviations:

- HO - Homeowner
- HOAO - HOA Office
- CCIOA - Colorado Common Interest Ownership Act
- DR - Dispute Resolution

HOA OUT OF COURT BINDING DISPUTE RESOLUTION (DR)

Resolving complaints between the HOA homeowner and their HOA

Abbreviations used in this document:

DR	Dispute Resolution Process
HO	Homeowner
HOAO	Proposed HOA Information and Resource Center with expanded authority
CCIOA	Colorado Common Interest Ownership Act. HOA State Law
Head, HOAO	The person in charge of the HOAO
CF	Colorado HOA Forum's DR Proposal
HRLNG	HOA Reform Leaders National Group DR Proposal
GD	HOA Governing Documents
HOC	Homeowner complaint
HOAU	HOA United's DR Proposal

Types of Penalties the HOAO can Impose

No monetary penalties
 Revoke the authority of an HOA to impose fines and fees until the HOA complies with the HOAO penalty
 Revoke the authority of an HOA to pursue forfeiture activity until HOA complies with HOAO verdict
 Removal of a Board member(s)
 HOAO can pursue receivership of HOA
 Direct the HOA to refund or return funds

Types of Complaints DR will not accept

HOA Board complaints filed by the HOA Board against a HO
 Complaints from people not recognized by the HOA Board as the owner of record or permanent resident.
 Direct complaints against a property management company
 Complaint against a Board member (s), complaints are against The HOA Board and not individual Board members
 Criminal violations
 Complaints from private companies including property management companies or HOA lawyers or other, HOA legal representation or any financial institutions

Introduction:

This Dispute Resolution (DR) proposal was developed to provide HOA HOs with the ability to file complaints against their HOA Board for violations and non-compliance with CCIOA or an HOA's GV's. Colorado has good OA laws. However, the HOA laws are mostly unenforceable from the HO's perspective because the State Legislature has not included in any legislation an affordable process for HOs to file a complaint against their HOA. HO's have to resolve their HOA complaints through our costly court system that matches the unlimited financial and legal resources of the HOA against the limited resources of the HO. Thus, too often HOs forfeit their rights under HOA laws due to the economics of a law suit. Compound this absence of DR with the fact that there is no State oversight of HOAs makes enforcement of HOA laws out of reach for HOs. Thus, there is little accountability imposed on HOA Boards for non-compliance with HOA laws. Without this proposed DR HOA governance law, HOA GD's and CCIOA are mostly ineffective from the homeowner's perspective. HOA Board non-compliance with the law without accountability continues to cost HOAs and HOs tens of millions of dollars each year in legal costs and most of this expense can be avoided with DR.

This proposal is focused on developing and implementing a HO DR process within the current HOA Information and Resource Center. This would require expanding the responsibilities and authority of the current HOA Center to include the investigation of HO complaints and rendering and enforcing decisions on HO complaints. The Center would have the authority to impose non-monetary penalties against HOAs for violating CCIOA or an HOA's GDs. This proposal is not applicable for HO complaints against an HOA's property management company (aka Community Association Managers (CAM)), HOA attorneys, disputes between neighbors or HOC involving monetary judgements or other HOCs complaints determined by the Head of this Office. The purpose of this program is to provide oversight of the HOA industry by ensuring HOAs comply with existing HOA laws and protecting homeowner's rights as stated in CCIOA and HOA GDs. Complaints would only be filed by HO's. DR

is not applicable or for use by HOAs in filing complaints against HOs. HOAs can continue to resolve issues with HOs by way of hearings with the HO or through or legal system.

DR will be self-funded through HOA registration fees and requires no taxpayer funds to implement, I will require a fiscal note that will read “no impact on State revenue or resources”. DR doesn’t infringe upon an HOA’s capability to enforce covenants or impose fines and fees nor add to the cost of HOA operations. It will not result in increasing assessments or legal expenses. In fact, HOA and HO legal expenses will be greatly reduced with DR being an out of court solution. DR is an affordable and quick process can resolve covenant and other disputes at the earliest possible date before they fester into a significant law suit.

Overview: This DR proposal involves expanding the authority of the HOAO to receive HO complaints, investigate complaints and render enforceable decisions. Colorado is absent State oversight of HOAs and an affordable and effective HO complaint resolution process with their HOA. The current HOAO doesn’t investigate HO complaints or render enforceable decisions on complaints received. The current HOAO is only empowered to receive HO complaints. Given this absence of an effective HO complaint process, HO’s must use our costly court system and lawyers to resolve disputes with HOA Board non-compliance with State HOA laws and their own governing documents. Due to the cost to the HO in gaining an enforceable verdict on their complaint, most HO simply drop their dispute and homeowner rights under State law. Thus, there is little to deter HOA Boards from their non-compliance with HOA laws. Lacking an HOA DR in Colorado does result in costly legal expenses for both the HOA and HO related to court cases. DR will eliminate, for the most part, the involvement of lawyers and courts as the HOAO will process HO complaints from filing the complaint to a verdict and at a total cost to the HOA and HO of no more than a \$35 filing fee.

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 and in HOA Bills: an affordable, accessible and expeditious enforcement process to resolve HO complaints with their HOA. Most HO complaints are related to an HOA’s non-compliance with Colorado State HOA law (CCIOA) or HOA governing documents. DR will accept HO complaints concerning HOA enforcement of these law 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 HOs and HOA’s. This proposal doesn’t impede a Boards authority to manage the community, place additional legal consequences to HOA Board members or enforce CCR’s.

DR proposal, compared to other State DR’s or similar systems:

This proposal was developed to address Colorado HO issues and complaints. It is a Colorado initiative that fits into Colorado’s government structure and takes full advantage of existing State HOA resources. 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 for 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:

The authority of the current State HOA Office would be expanded to manage all facets of this DR proposal including receiving, investigating and rendering enforceable verdicts on complaints

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.

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. The HOA data base will contain all HOAO data collected from the current registration form, plus confirmations from HOAs concerning tasks listed in this proposal, and other items determined by the Head, HOAO to be collected in the registration process.

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 and that DR was presented to HOs as part of a community meeting and through email yearly. The HOAO will develop an educational guide on DR and distribute to all registered HOAs that will in turn distribute to HOs. The guide will be posted on the HOA website.

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

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.

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.

HO complaints must be filed with the HOAO within 10 days after the HOA hearing and/optional mediation.

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 their 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 HOC complaint with the courts but changes their mind and now 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 optional mediation. If agreement is reached in the optional mediation, it would cancel the HOAO complaint upon notification from the employee else the HOAO would proceed with the investigation and rendering a decision.

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. No lawyers are

required, except in extraordinary situations. Legal fees would be paid for as determined under the HOAO decision.

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. An HOAO verdict will not include the award of attorney fees except in extraordinary cases and approve by the Head, HOAO.

The HOAO will avoid verdicts that allow for partial compliance or be settled by invoking the “best business judgement rule” or “judicial discretion” when the law doesn’t specifically allow for such a judgement.

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

Allows for the new HOA Office (HOAO), with expanded authority under this dispute resolution (DR) proposal, can direct an HOA, upon finding the homeowner's (HO) complaint against the HOA concerning a fine, fee or other debt to be valid: 1) to cancel a HO fine, fee or other debt or 2) to refund the amount paid by the HO to the HOA.

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 for DR cases.

Homeowners can’t file a similar or identical complaint with the HOAO within nine months of filing the original complaint. The Office can deny a HOC during initial review or investigation if it is deemed frivolous or not supported by CCIOA or the HOA’s GVs, or too costly for the Office to pursue or other reason determine by Head, HOAO. The HOAO will pass on to another government unit an HOC they’ve received but not fully processed.

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 to either use the court system or DR at the start of this process. An HOA Board would not have the right to pursue a court action against a HO when the HOAO finds the complaint in favor of the HOA. The DR complaint is considered final and also can’t be can’t be appealed. ruling.

If a HO’s complaint is not filed with the HOAO within 30 days after the HOA hearing, the ability of the HO to use HOAO DR is prohibited. If the HOC has been filed within the allotted 30 days it would prevent the HOA from filing a lawsuit and the decision rendered by the HOAO would be. If the HO doesn’t file a case within 30 days after the hearing the HOA can proceed with a law suit. If the HOA files a law suit related to the complaint prior to 30 days after the HOA hearing, the HOA court case is invalid. If the HO chooses to use the court system for DR they have 30 days after the hearing ends to file their case.

HOCs considered too complex or expensive to process can still be pursued in the court system by the HO.

HOA homeowner complaints are against an HOA Board and not an individual Board member. Board member legal accountability will not increase with this DR.

HOAO decisions can involve the recovery of HO fines, fees or other amounts paid to the HOA. The DR can result render a decision directing the HOA to cancel an unjustified fine or fee

HOA complaint filing fees are not refundable. Re-filing the same complaint within 9 months of the original filing and verdict by the HOAO will not be permitted. After 9 months the HO can file the complaint again and it 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 HOAO decisions.

The Office can include as part of a penalty that the HOA must end/delay foreclosure proceedings until they comply with HOAO verdict. This will not be invoked until 30 days after issuance of a DR verdict which provides the HOA 30 days to respond to the verdict.

The Office The Head, HOAO will determine the types of complaints they will process. See list beginning this proposa

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 to HO inquires/complaints.

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 decided 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 HOAO will not direct a HO to pay any fines, fees or assessments. The HOAO will not be involved in collection activities but can render a decision on a HO account balance or HO debt. The Office can direct the HOA to cancel a fine, fee or HO debt or direct the HOA to refund a paid fine, fee or debt.

The HOAO will accept HOCs relating to an HOA not complying with debt collection notification letter issuance, relating to a HO's non-compliance with CCIOA HOA. The homeowner will receive the same number of HOA notices from the HOA in their attempt to resolve any issue. The HOA will conduct or offer to conduct a hearing between Board members and the HO prior to DR or other legal means.

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. Incurring any HOA or HO legal costs is a voluntary act of each party and not required under or used in DR.

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. 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.

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.

A complaint involving a SLAPP suit (Strategic Lawsuit Against Public Participation) aimed to intimidate, silence, or censor critics will be considered illegal and the HOA will be penalized. 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 limited homeowner complaints involving Americans with Disabilities Act and Fair Housing laws. The Head, HOAO will set guidelines for the type of ADA related HOC that will be accepted. The design of DR for on-line filing will comply ADA requirements. Alternative filing methods such as mail-in or phone answering equipment will be offered to meet ADA requirements.

ADA and senior HOCs will mostly involve that which is required under CCIOA, HOA GV's.

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 communicate with HOs on DR once every six months feedback and ideas for improvement.

Home buyers will be provided with a link to read the latest version DR on-line the HOA, make DR a topic at a community meeting once each year and post a link on their website to this 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. The Head, HOAO will justify this as needed.

This proposal applies to all CIC's/HOAs/Condominiums in Colorado with an active HOA.

The HOAO will develop a standard informational email on DR for use by HOAs to inform HO on this new process.

All DR software, hardware and processes will build upon the existing HOAO resources. The 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 HOAO internal staff. Reliance on any vendor or State Office will be minimized.

The current name of the HOA State 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 and finding using an Internet search engine.

The current **HOA Information and Resource Center is mostly unknown** to the public and the mission and authority of this office is mostly or totally misunderstood by HOs. The Office will continue its outreach and educational programs and maintain its current website. The HOAO will develop a plan for yearly advertising expense. The HOAO will be authorized to use HOA registration fees to pay for advertising.

Add a requirement that homeowners can give up their right to pursue their complaint in court should they choose the HOAO DR or give up the right to the pursue the complaint if they choose the HOAO DR.

Complaints that are deemed by the Head HOAO to be outside their jurisdiction, too costly or time consuming to render a decision will be passed along by the HOAO to another State entity, such as the Attorney General, for investigation.

The HOA registered owner(s) of a housing unit (the occupants entitled to vote in an election) and permanent residents of the unit will be able to file a complaint using DR. A permanent resident of the with the same rights as the person on the home title/deed and recognized by the HOA s as the homeowner can file an HOC. An HOC can only be filed by one permanent/owner and the same complaint can't be filed by more than one permanent resident of the housing unit.

HOAs will conduct a hearing with the HO on any HOC that was not resolved through notifications to the HO from the HOA. HO or HOA Boards can request this meeting and it will be completed within 10 days of the last notification. Only with agreement among both the HOA and HO will lawyers or representatives from a property management company be allowed to attend. The hearings minutes will be completed with both the HOA and HO signing it. The minutes will contain any agreements between the HOA and HO. HOA will offer the HO a hearing or the HO can request the hearing. If no agreement is reached in the he

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