

OUT OF COURT BINDING DISPUTE RESOLUTION PROPOSAL
Administered by the Dept of Regulatory Agencies, State HOA Office



Homeowner chooses to take complaint through court system, decision in court, can appeal decision, and assumes assigned court costs. Right to submit complaint to HOA Office is nullified by this action.

Homeowner chooses to process their complaint within the State HOA Office.

Homeowner files complaint on-line

Complaint Reviewed by State HOA Office

Rejected

Accepted

Complaint found to be frivolous or unjustified and rejected. Homeowner can go to court but not file the same complaint with HOA Office again.

Investigation of Complaint

Enforceable Decision Rendered

See pages 2 – 6 below for details on our proposed Dispute Resolution Process within the State HOA Office

Full details of this proposal are on the Colorado HOA Forums home page website "[Dispute Resolution](#)".

The design, protocols and management of this process are important and will provide balance between the HOA and homeowner in enforcing homeowner’s rights, ensuring the homeowner has access to an affordable, fair, non-litigious and understandable process to resolve nearly all homeowner complaints at the earliest time. This proposal will not require any State general funds: its’ self-funded for no more than a maximum of \$3 per year per household. This proposal stresses that our overloaded court system is not the place for settling homeowner disputes as most are very simple and non-litigious. The courts, even Small Claims Court, present a financial burden on the homeowner to gain judgement thus this proposal would resolve this issue. The proposal would also mitigate legal expenses for both the homeowner and HOA by limiting attorney and court involvement. No new government entity, in Colorado, would be required as this proposal simply expands the authority and mission of the existing State HOA Office. Dispute resolution as proposed would save homeowners and HOAs tens of millions each year by avoiding the court system and paying legal costs: the system would return many times over any costs to homeowners, this is a cost savings measure. The courts, lawyers and mediation sessions are costly and time consuming, this also resolves these issues.

Summary of Proposed Dispute Resolution Process within the State HOA

This proposal on out of court binding dispute resolution is needed to enforce State HOA law (CCIOA), an HOA's governing documents and other laws related to non-profits. The main State law CCIOA (1992) and all legislation passed since CCIOA contain no meaningful mention of how a homeowner can hold their HOA Board accountable for non-compliance with such laws or abusive practices or how to enforce homeowner's rights. CCIOA provides no affordable, understandable, accessible or non-litigious venue in which homeowners can pursue their rights under the law except our costly and litigious court system. Thus, most homeowners can't pursue their rights. The current HOA complaint system matches a homeowner's limited resources to that of the HOA's unlimited financial and legal resources and that is neither fair nor balanced. Nearly all HOA homeowner complaints stem from the absence of a forum upon which they can pursue their rights under the HOA Declaration. HOA homeowner complaints don't belong in our crowded court system as they are simple and clear cut in the law and don't require legal advice. The **absence** of an effective **enforcement** venue for HOA homeowner complaints is the **root of the problem**. **Provide an enforcement venue and the complaints will mitigate and HOA and homeowner legal costs savings in resolving issues will be brought to a minimum.**

Details for inclusion in any legislative proposal:

Prior to the homeowner filing a complaint with the HOA Office, the homeowner will have received notifications as detailed in CCIOA and offered a hearing with the Board. This is mandatory. The hearing will be attended by HOA Board member(s) and the homeowner. The hearing is considered a mediation session. A professional mediator is optional at this meeting. The party requesting the mediator will pay for the mediator. If both parties agree that a mediator should be present each will pay for one-half of the mediator's charges. No attorneys will be present at the homeowner's hearing.

The HOA will update their billing and collection (B&C) and covenant enforcement policies to include the most recent dispute resolution policy and at least once a year email the policy to all homeowners and present the policy at an HOA homeowner meeting. The policy will also be posted on the HOA's website. The State Office will notify

all registered HOAs of any new dispute resolution process within 30 after the Bill is signed.

The dispute resolution process can be completed in full by the homeowner on a computer. The Office will develop methodology to allow for convenient and effective filing by those with no access to a computer, for the elderly and disabled, to accommodate language barriers and others with special needs. The Office will restrict communications in this process to the complainant and HOA and will not respond directly to any lawyer requests/letters or from a management company. The homeowner complaint is between the homeowner and HOA and not any private business.

Minutes of the HOA hearing will be documented including any signed agreement and if the hearing results in no agreement the minutes will include the disputed issues that led to an impasse. Neither the HOA or homeowner can be awarded attorney fees in a complaint hearing.

Any HOA Dispute Resolution process must be economical to implement and maintain; require no more than two employees with legal credentials among the staff; take advantage of the resources in the State HOA Office; must provide the homeowner with an affordable, non-litigious, accessible and easily understood complaint filing system; any additional funding required by the Office to implement this process will not utilize

taxpayer general funds but through HOA registration fees projected and limited to no more than \$3 per housing unit, this program is self-funded; ; the Office to be an independent-self managed entity within DORA; will not be dependent on the resources/services of any other State Agency/Department as the Office is self-funded and managed; will require minimum legal resources of not more than two employees with legal credentials; the Office will investigate and render decisions based on State law(s) and an HOA's governing documents and will get involved in criminal or felony cases; the Office has the authority to award injunctive relief; the Office will accept all HOA homeowner complaints that involve violations of CCIOA and/or an HOA's governing documents; the Office but will not accept complaints that involve a monetary solution such as attorney fees, reimbursement of home owners expense involved in the complaint or any other complaint that the Office Head deems inappropriate based on its mission statement.

The Office will not accept any complaints against an HOA's property management company nor will it get involved in legal cases/court cases in any capacity.

HOAs found to be non-compliant with CCIOA or an HOAs governing documents can be penalized through non-monetary by the HOA Office such as: precluding their right to assign fines for covenant violation; remove the HOA's authority to foreclose a lien; removal of a Board member(s); or other penalty deemed appropriate the Head of the Office.

Homeowners can't file a similar complaint within six months of filing the original complaint. The Office can reject investigating and rendering a decision on any complaint if it decides the complaint is frivolous, not supported by CCIOA or the governing documents and/or would be too costly for the Office to pursue.

The ability of a homeowner to recover financial damages from an HOA and right to sue an HOA for monetary amounts (within limits) in court through Small Claims court would not be affected by this process.

Some cases considered by the Office to be too complex or expensive would not be handled under this process.

This dispute resolution process developed for and by Coloradans to meet homeowner known requirements will: fit into Colorado's structure of government and rules and regulations to mitigate the impact on other State resource; not require State financial resources or taxpayer general funds other than what the HOA Office receives through the current year's budget; any additional funding for staffing, hardware or software, office equipment or other resources to manage this program will be paid for through HOA registration fees.

The Office will create a State HOA data base for use by homeowners, the general public, Realtors, HOAs or other entities. The data elements in this HOA data base will be based on the Office's and the general public's information needs with the Head, HOA Offices approval. Personal identifying information will not be accessible by the public or government entities and only the Head of this Office can approve requests for this information

This system would also provide for a process to track the history, documentation and status of complaints

Any software procured by the Office to process complaints and collect and report on HOA information needs will have the capability to interface with other State systems as needed.

Dispute judgements rendered by the HOA Office will not involve assessments, special assessments and attorney fees unless the complaint has to do with non-compliance of HOA governing documents or State law. If the complaint on these exclusions involves violations of State law or governing documents the Office can invalidate the HOA claim to financial debt but not be involved in the recovery of funds by the homeowner (this would be completed in Small Claims court or higher judicial venue.

Homeowners will not file a similar complaint with the Office until six months has elapsed from the original complaint.

The cost to file a complaint with the Office will not be greater than \$25.

Part of the investigation of complaint task will be to collect information on any HOA offer to settle the issue and explanation of rejection by the homeowner. This will also be noted when completing the complaint form.

The minimum information to be completed on the complaint form: homeowner's name and address and best means to contact them; a statement quoting CCIOA or the governing that the HOA violated; if they completed the required hearing between the complainant and HOA Board; describe any notifications receive from the HOA Board on this issue; who the homeowner was corresponding with on this issue (HOA Board, HOA attorney, HOA management company or other); the name, address and phone number of the HOA and how to best contact them and a person of contact at the HOA relating to this dispute; what was the stated justification by the Board to enforce the issue in your complaint; only one issue per complaint; if the complaint is similar to any complaint you filed within the past six months and what was the decision rendered on that complaint; confirm the "as of" or "last update" date on the governing documents posted on your web site/provided to homeowners; include statements with a YES or NO confirmation by the homeowner that they read and understand : there is no appeal to a decision rendered by the HOA Office, the homeowner can take their complaint to Small Claim or other court venue for a decision but the process and be costly when attorney fees are awarded to the winner of the case and that amount can easily involve thousands of dollars; there will be no refund of the complaint fee;

The Office will begin processing all complaints within 5 business days of receipt and render a decision, unless **extraordinary events require additional time, within 10 days of receipt of the complaint.**

The Office's decisions will be based upon State HOA law (CCIOA), HOA governing documents and Colorado statutes and not allow for partial or substantial compliance with the law unless there are extraordinary circumstances. Judgements rendered will not involve judicial deference.

The Office can direct the HOA to extend a violation cure period on covenant enforcement on an exception basis or health or financial situation but not direct any HOA to cancel a justified fine or fee or other charge by the HOA to the homeowner

HOAs will not be able to appeal Office decisions on homeowner complaints with this caveat agreed to as a requirement in registering the HOA. HOA appeal will be considered completed in the HOAs response to the Office in the investigation stage.

The Office can direct an HOA to end/delay foreclosure proceedings if it is found that the HOA violated State law related to billing and collection and notification mandates.

HOAs will not be able to appeal Office decisions on homeowner complaints with this caveat agreed to as a requirement in registering the HOA.

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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 already paid** by the homeowner to the HOA or in attorney fees is completed in Small Claims or other level court.

The Office will not get involved in disputes regarding construction defects, property boundary disputes or decisions and actions of local law authorities.

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 their insurance company or outside entity as needed in their investigative and decision rendering process. This is mainly completed when there is a need to identify accountability and financial responsibility for an incident.

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 or in conjunction with a private firm to develop such educational material.

There is no requirement that HOA Office staff who receive, review and investigate complaints to 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.

The Office in its annual report to the legislature will include statistics on the number complaints filed, types of complaints, 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.

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 and the HOA.

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, fees or assessments but can render decisions as to the validity of such debt and if the HOA has complied with State mandates in collection actions. The Office can render a decision that involves canceling debt to the HOA.

HOAs can't use this process for complaints against a homeowner.

The HOA Office will inform the public on the presence of this process utilizing their website, their outreach program, through legislators, training sessions, media stories and advertisements, and other methods as appropriate. The Office funds can be utilized to inform the public of the Office's existence and mission. HOAs 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 bulletin board or other means to ensure notification. No certified mail to each homeowner is required. The HOA Office will direct registered HOAs to notify homeowners and confirm as such via the registration process.

Personal information about the complainant is confidential including the name, address, telephone number.

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.

This Office can't instruct an HOA to change its' governing documents or rules except in the case where there is conflict with State or Federal law. The Office can direct an HOA to update their governing documents and rules.

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 criminal activity. The HOA, not the individual Board member is the accountable party in filing a complaint. However, if it is proven that a Board member(s) is directly involved in a violation or obstructed in compliance they can be removed from the Board by the HOA Office)

Confirmation of compliance with an Office complaint decision: the HOA and complainant will be notified of the decision and related penalties and cure date: if the HOA doesn't comply with the decision the Office will invoke all penalties and such penalties will remain until the HOA is in compliance; the HOA will inform the Office and the homeowner upon their compliance; and the homeowner will apprise the Office of compliance by the HOA. Compliance means fully complying and rectifying the violation and there will be no acceptance for partial or substantial compliance. If a cure date for the violation is not met the Office can apply additional penalties including removal of a Board member(s). An HOA with three or more outstanding verdicts (not cured after a decision) the Office can order a Board member(s) to resign and/or petition the HOA into receivership.

A homeowner is limited to 3 different complaints in any nine-month time-frame.

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

As part of HOA registration, the HOA will check a box or other affirmative response method that it agrees to abide by all State HOA laws, to participate in the State HOA Office dispute resolution process 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 and/or removal of Board members. HOAs will not be able to appeal an Office decision and neither will the homeowner.

A homeowner can file a complaint with the Office concerning non-registration of their HOA. The HOA can be directed to register by the Office.

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. An HOA refusing to register under the Office's registration policies can be subject to a court order to register and/or removal of Board members. HOAs will not be able to appeal an Office decision and neither will the homeowner.

Homeowner complaints for HOAs created pre and post CCIOA can use this process

Any legal fees incurred by an HOA in responding to Office requests for information will be paid for by the HOA and not charged to the homeowner. In the event the HOA is found to be in compliance they can't recover legal fees from the homeowner.

The State HOA Office in its' investigative efforts and responsibilities will have access to all HOA Board members. Failure of a Board to respond to an HOA Office request within 3 days will result in a penalty to the HOA and the complaint considered valid and direct the HOA as applicable to resolve the issue.

The Office can seek injunctive relief from courts to enforce compliance with any decision by the Office

If a complaint involves a SLAPP law suit/threatening letter the Office can direct the HOA and/or its' attorney to end such activity/behavior and to take action to cancel/remove the letter from government data bases: No SLAPP suits (A Strategic Lawsuit Against Public Participation (SLAPP) is a lawsuit that aims to intimidate, silence, or censor critics. SLAPP suits are also known as intimidation lawsuits or strategic litigation against public participation. HB19-1324, Anti-SLAPP Suit addresses dismissal of SLAPP suits.

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