

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

Our [website](#) contains a host of articles about previous legislative efforts, State studies, cost to implement and features of an out of court binding dispute resolution process that could work for homeowners within the State HOA Office. Below is a summary of the features of this process and how it could be proposed in a Bill. Specifically, it proposes a venue/process for HOA homeowner dispute resolution that is simple, accessible, affordable with no burden on taxpayers or businesses. It focuses on disputes that only relate to enforcement of State HOA law and an HOA's governing documents; no criminal cases; it wouldn't involve complaints against management companies; HOA Board members and HOAs would not be financially liable for their actions rather HOA violations would carry non-monetary penalties; the program would be managed all within the State HOA Office; an enhanced complaint filing system would allow for homeowners to either use this process or the courts to resolve a complaint but not both; and enforcement would be carried out by the Office similar to that which is involved in DORA's licensing programs and/or was practiced in the former HOA property manager licensing program. The goal of the program is to provide homeowners with an effective, accessible, affordable means to resolve disputes without the use of lawyers or the court system as most complaints involve simple, non-litigious violations that do not require legal interpretations, lawyers or the courts to render decisions and offer solutions. The design, development, implementation and maintenance of this system should be: independent and not integrated into any other DORA systems except for management oversight; it should utilize software and hardware that is purchased using a fee assessed to all HOA homeowners; must ensure this system is developed to meet the specific needs of homeowners and not a hybrid of any existing DORA regulatory process or system; and to ensure this process doesn't have to compete with or be dependent upon other government or private resources to complete its' mission. This process is not to be a replacement for the court system but as an effective, affordable and accessible venue for dispute resolution for the homeowner. This process does represent the expansion of authority and scope of work for the State's HOA Office and is in support of State studies indicating this Office is a good placement for dispute resolution. This process is also to be implemented to fill a hole in all existing State HOA law that leaves out any feasible, affordable, accessible, and workable means for enforcement of such laws from the homeowners perspective. The goals and objectives of this process are to ensure enforcement of HOA homeowner's rights defined by State HOA law and an HOA's governing by providing an out of court venue as described herein without which homeowners will continue to pursue their rights due to the cost and complexity of our court system.

This Bill authorizes the State HOA Office to design, develop, implement, maintain and manage an out of court binding dispute resolution process that includes the following:

- 1) The Office will receive, review, classify, and investigate HOA homeowner complaints and render decisions on such complaints. Such complaints to be filed only by way of an on-line application.**
- 2) The complaints are limited in scope to violations of State HOA law and an HOA's governing documents and don't involve recovery of financial damages or felonies. However, a complaint can challenge an HOA fine, fee or assessment for validity and cancellation. Any complaint deemed by DORA to be outside this scope or overly complex requiring a court action to resolve can be rejected by DORA.**
- 3) 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 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).**
- 4) 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 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 the Head of the Office; the Head of the HOA Office and other staff will render final decisions and inform the HOA of such decisions and penalty as applicable.**
- 5) This process would not allow for HOAs to recover legal expenses from homeowner complainants.**
- 6) 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.**
- 7) A homeowner will continue to have the right to use the court system vs the State dispute resolution process.**

- 8) A homeowner using this dispute resolution process must agree that their complaint will begin and end with such process.
- 9) A complaint filing fee of \$35 will be assessed to the homeowner. No refund of this fee. The fee will be assessed to all complaint filings to discourage frivolous complaints.
- 10) Funding for this program will require an assessment of up to \$2.00 per home per year from each registered HOA for the initial start-up year, no more than \$1.75 in the next two years. DORA will adjust fees as needed in subsequent years. HOAs will assess homeowners with this annual charge within 60 days of this Bills approval and in subsequent years the date to bill homeowners to be determined by DORA.
- 11) Expenses to operate this system will not exceed the funds collected through the assessment thus no additional taxpayer funds are required and the services provided is limited to that which can be paid for via this fee.
- 12) The HOA Office will develop an easily accessible complaint filing system that requires of 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.
- 13) 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.
- 14) This system is not used to file a complaint against the HOA's property management company.
- 15) This system is not used to file a complaint against a specific Board member but only the HOA.
- 16) 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.
- 17) This system can only be used by a property owner within the HOA.
- 18) HOAs are required to respond to all requests for information within 10 days or be subject to the same non-monetary penalties mentioned in item 10 or other non-monetary penalties implemented by DORA.
- 19) The HOA Office will correspond with the HOA Board in problem resolution via email, USPS or other postal system, or telephone and conduct in person meetings as necessary. If an HOA uses legal counsel they can not be reimbursed for such costs if they are held not in violation of the law.
- 20) 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 is the accountable party. No Board member can be personally sued for a violation.
- 21) HOAs will not use this process for complaints against a homeowner.
- 22) The HOA Office will limit the use of outside resources such as mediators, lawyers, the court system or State computer resources and staff outside the Office and be responsible for managing the staff and technology that support this process.
- 23) The HOA Office will inform the public on the presence of this process and its' use utilizing their website, in their outreach and training session and in reaching out to the media.
- 24) HOAs will be required to notify homeowners of this process at least semi-annually with DORA providing the verbiage. The notification can be completed by using the HOA newsletter, bulletin board, email or other means in which they inform homeowners of actions affecting the community.
- 25) 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, the property management company of the HOA, identifying and contact information of the HOA and other information that an investigator deems helpful.
- 26) The Office will produce an annual report that includes the number complaints files, complaints dismissed prior to being investigated, complaints investigated, cases settled, beginning and end dates of complaints, outstanding complaints, complaints referred to the courts and a yearly report on income and expenses. All data can be sorted by HOA name and other data elements collected.
- 27) The Office will classify all complaints by type to aid in analysis and reporting.
- 28) Only homeowners living in a registered HOA can participate in the complaint process.