

## **Implementing an Out of Court Binding Dispute Resolution Process A Colorado Case Study: feasibility and cost**

Colorado has many comprehensive and definitive State HOA laws but every one of them lacks a viable means of enforcement from the home owner's perspective. The simplest violation of State HOA law or a home owner's HOA governing documents by an HOA Board must be resolved in court. This matches the home owner's limited financial resources against the unlimited financial and legal resources of the HOA: not a level playing field. Most home owners don't/can't pursue their rights under the law even when 100% in the right. Thus State laws are mostly administrative and "feel good" and provide little enforcement of home owner's rights.

State law in Colorado has included verbiage making mediation a means to pursue home owner's rights. This simply hasn't worked. Exemplary of this is the several thousand complaints/inquiries received by the State's HOA Office in its' first two years of existence. Additionally, mediation is not a final but a hopeful means of dispute resolution. Mediation may result in a written agreement but the fact is either party can breach the agreement and the home owner ends up in court. Worse yet, mediation requires the home owner to gamble \$300-500 on a mediation session with the hope of an agreement: most home owners can't gamble this amount of money on a hopeful agreement, they want closure. Problematic is that mediators are not a recognized profession and have no professional standards. Anyone can be a mediator and anyone can be an HOA mediator without knowledge of HOA laws. In too many cases the law allows for an HOA to pick the mediator not the home owner or agreed upon collectively. Furthermore, any oversight by the State to qualify and manage independent, unregulated mediators would be very costly and unmanageable and prone to irregularities with no standards vs an HOA Office having in-house, trained and managed staff operating the program with a defined mission and standards. Additionally, home owners would benefit more by filing a complaint with the State for a minimum fee and getting closure on an issue than spending \$300-500+ with a mediator with uncertainty of an outcome (or any outcome settlement) thus making any small State filing fee a non-issue and making such a user fee acceptable.

A [State Study in 2013](#) addressed the need for identifying a viable means of dispute resolution. Recommendations were identified suggesting effective means of processing home owner's complaint and enforcing HOA law. Directly mentioned is the [implementation of an out of court binding dispute resolution process](#): In other words, an out of court solution. No action was taken on this report. A State Sunset Review in 2019 recommended an out of court dispute resolution process be implemented within the State HOA Office. A State study mandated by the Governor recommended an out of court dispute resolution process be implemented for HOA complaints.

Colorado had an out of court dispute resolution process for home owner complaints related to HOA property management companies through the [State's HOA property management licensing law](#). (this program was ended in 2019 but not due to failure of the dispute resolution process). Home owners could file a complaint on-line, have it vetted, and if found to be

substantive the State investigates the complaint and renders a decision. The filing fee is free. Although the State is limited in awarding plaintiff remedies to fining property managers and/or revoking their licenses, this venue does provide an ADR solution. Home owners could also opt for a court case using their own funds. Then in 2019 a law was passed providing home owners in mobile home and manufactured home communities with an out of court dispute resolution process for their complaints with their landlords/management companies. The question is, if good enough for property manager complaints why not for HOA complaints?

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The State would have a relatively easy time to fund and implement an out of court binding dispute resolution process for HOA vs home owner complaints. Homeowners could still opt for a court case! The State HOA Office is already staffed, occupies office space, has a web site, provides home owners with a web-based application to file complaints, it reviews and classifies all home owner complaints/inquiries, and is authorized to collect HOA registration fees. The learning curve to implement this process would be very short as the State conducts similar processes for regulated professions and there is no need to deviate much from their working and successful system. The missing links to implementation are (other than passing a law) funding, enhancing and changing the complaint filing form/process, hiring and training additional staff. The need for lawyers is minimal as approximately 90% of the complaints received by the State HOA Office neither belong in court (require legal opinions/arguments) and involve simple disputes related to non-compliance with HOA governing documents and State law. Complaints would mostly be settled by simple and brief communication between the homeowner and HOA and the State Office. These are not long drawn out complex issues! Note, complaints would require documentation by homeowners to justify a complaint and to have it vetted: this cuts down on research by HOA Office Staff. Research indicates other states resolve cases quickly and without the need of lawyers. When the State is involved in investigating a valid complaint more than likely HOAs will respond with a solution quickly. Also, a good number of complaints would be vetted up-front and dismissed quickly for a variety of reasons and not require any investigation.

Funding a State dispute resolution process for home owner complaints can be completed with no taxpayer funds, period! HOA registration and HOA complaint filing fees can easily fund the program. Current registration fees (\$33 per year) cover current State HOA Office expenses. Funding this new process: HOA complaint filing should carry some minimal fee, \$25-75, to reduce the number of frivolous inquiries. Other States charge a filing fee: Virginia \$25, Maryland \$50, Arizona \$500. HOA registration fee increase of no more than \$1.50 per HOA household per year would be more than enough to fund the hiring of additional staff, technology, and overhead. There are approximately 8,000 registered HOAs that include upwards of 900,000 household units (\$1.35 million new revenue). The yearly HOA registration of \$33 would continue providing total revenue of nearly 1.2 million dollars. It can also be anticipated that in subsequent years after implementation the resources required to investigate and litigate the program will lesson when HOA Boards understand home owners have a workable, accessible, and affordable venue to litigate their rights. HOAs and home owners would save in legal costs by staying out of court thus saving millions of dollars and

offsetting any increase in registration fees. The court system would save by decreasing the case load related to HOA litigation.

A summary of approximate required resources to implement and ongoing costs: 4-6 additional staff (two administrative, 4 trained complaint resolution specialists (investigators) and one legal (not full time but as needed). Two administrative total compensation \$60,000, four investigators \$95,000: approximately \$500,000. Technology enhancements, overhead and office equipment upgrades \$100,000. Total of approximately \$600,000 a year (liberally estimated). This amounts to less than one dollar per year per HOA household: approximately 800,000 HOA households in Colorado. The number of HOA households in Colorado continues to grow thus the per year fee would continue to fall as the total cost is spread to a larger pool of households. Note, since the Office already receives and records complaints these costs are directed at the additional work in vetting, investigating and rendering decisions. This cost is many-times returned in legal cost savings to home owners and HOAs and in cost savings to the court system with relief in court caseloads: a great cost-benefit proposal.

The cost estimate is purposely liberal. For example, Virginia staffs its' HOA Ombudsman Office that receives HOA general inquiries, receives home owner complaints, vets complaints for validity, investigates and renders decisions, conducts outreach and education to the public and work with the legislature on HOA issues with ONE person.

Out of court dispute resolution within the State Office meets the tests of providing HOA home owners with an affordable, accessible, and expeditious means to enforce their rights under the law; requires no new taxpayer funding; will not require a new Office or bureaucracy; will not impose any financial burden on HOAs or home owners; and will make all existing State HOA laws and HOA governing documents immediately effective from the home owner's perspective. Each year between homeowners and HOAs millions of dollars are spent in legal costs that will be greatly reduced with a State operated dispute resolution process. This system will allow homeowners to pursue their rights under the law that they would otherwise not do so as they can't afford a costly court case. The State provides no cost dispute resolution for HOA homeowners in mobile home and manufactured home communities and this process would be very similar to that. The State had provided dispute resolution between a homeowner and property management company until the program was ended in 2019 but this process would be similar.