



Recommendation

OUT OF COURT BINDING DISPUTE RESOLUTION

Administered by the Dept of Regulatory Agencies, State HOA Office

START: HOMEOWNER DECIDES HOW TO FILE HOA COMPLAINT

COURT SYSTEM

Home owner 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.

STATE HOA OFFICE

Home owner chooses to use State Managed Complaint Filing and Resolution Process, decision enforceable through Dept of Regulatory Agencies that manages the program within the State HOA Office, home owner files complaint on-line. Complaints involve violations of HOA governing documents and State HOA laws (not felonies or other criminal activity). Home owners must show evidence they attempted problem resolution through HOA process reaching no mutual agreement. This process is not for filing a complaint against the HOA management company or an individual Board member. Decision final, accepted by HOA and homeowner, right to appeal in court not available.

Complaint reviewed by State HOA Office

Complaint not applicable to process or found to be frivolous or unjustified are rejected, homeowner may take complaint to court but not refile same complaint with HOA Office

Complaint investigated by State HOA Office

Enforceable Decision Rendered

This process funded by HOA Registration fees and supplemented as needed by a complaint filing fee. A complaint filing fee would not only help fund the program but mitigate the number of frivolous and repeat filing by same homeowner. HOA registration fees or other means of collection to be used to fund program at a rate of approximately \$2 per household per year initial year (start-up). A cap of \$3 per home per year as authorized by the HOA Office.

Cost savings in legal costs for both the HOA and home owners by avoiding court can be claimed to be upwards of millions of dollars yearly. No new taxpayer funds required. This process would encourage both parties in the complaint to not use lawyers but to resolve issues among the home owner, HOA Board and as needed management company and HOA attorney. The State process would focus on compliance with State HOA laws and HOA governing documents. Recovery of financial damages vs compliance would be referred to Small Claims or other courts as applicable. The Office would not impose monetary fines on HOAs nor could it get involved in awarding financial damages. Felony actions would not be part of this system. This system would not require any costly and time-consuming pre-processes such as formal mediation that mostly add time, process, cost, uncertainty to gaining a decision for the home owner, agreement can often be walked away from ending the homeowner in court after gambling \$400-600 on mediation: the cost to mediate can often exceed the benefit of pursuing one's rights (see discussion below). All Office staff would be educated in State HOA law and other skill. Some cases considered too complex or expensive would not be handled by this Office unless the homeowner agrees to paying such excessive costs. The Office would have the authority to impose injunctive relief in complaint resolution. Details of the total program are in the narrative that accompanies this flowchart.

This out of court binding dispute resolution process administered by the State: 1) allows homeowners to avoid the costly, time consuming, and litigious court system as a sole source for HOA dispute resolution, 2) provides a total process under one Office and does not involve third parties or other Government Offices 3) relieves our court system of case load and cost and trying cases that should otherwise be litigated out of court 4) provides for staff that will be trained/knowledgeable of HOA law 5) this process is affordable (low to no cost to the home owner to file a complaint) and accessible to all home owners 6) will save HOAs and homeowners millions each year in legal cost thus it is a program that saves, not costs, money 7) will make all HOA laws effective and enforceable from the homeowner's perspective as this was the missing enforcement element in all legislation and 8) a complaint filing fee of \$35 is suggested to reduce the number of repetitive and/or frivolous complaints. A 2013 State Study and Sunset Review Study 2019 suggests an out of court binding dispute resolution process. The fact that the State HOA Office has received thousands of complaints in its' brief history brings to notice a need for a workable dispute resolution process. NOTE: the State administers a home owner dispute resolution process for those in mobile home and manufactured home communities and previously for complaints by homeowners with the HOA management company and this process would be similar. Since this process doesn't involve a regulated business or licensing it is best administered separate from DORA regulatory resources and management and placed within the State HOA Office.

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