

Colorado HOA Forum
Stan Hrinkevich President
www.coloradohoaforum.com
Email: coloradohoaforum@gmail.com

HOA Issues Paper: Detailed

The following pages present seven issues by the Colorado HOA Forum for which we seek legislative sponsors. The proposals are highlighted in yellow. Following each proposal is a discussion on background and content of the proposal, funding requirements, pros and cons of the issue, and interest groups that might lobby for approval or rejection. This format was suggested to provide legislators with more than a talking point/one liner for an issue but to inform and educate on the issue so one can make an informed decision.

Your consideration to discuss these HOA (Homeowners Association) issues with us is appreciated.

Issue Paper on Proposals for Legislative Action
Homeowner Association (HOA) Issues for Consideration in Legislative Bills
Colorado HOA Forum www.coloradohoaforum.com

The following proposals (yellow highlighted) are offered by the Colorado HOA Forum for consideration as legislative proposals. A background discussion and other pertinent information follows each proposal (in bold).

1. Prohibit/limit transfer fees on HOA and other community property home sales.

Background: Residential home sales transactions are prohibited from charging a “transfer fee” in most instances. An exception was made in SB 11-234 for community association properties (HOA’s). HOA transfer fees can range anywhere from \$75 to over \$500+. The HOA does not receive the fee. The fee is charged and received by a Community Association Manager (CAM) also referred to as a property manager. The exception was entered into law to ensure CAM’s are reimbursed for extraordinary records maintenance costs related to HOA home sales not present with non-community property home sales.

Note, the transfer fee is not an advanced payment of HOA dues or a “contribution” to the HOA to raise revenue or any type of “buy-in” to the community: it is not revenue to the HOA.

Since making transfer fees illegal on all but HOA/community association properties in July 2011 there is no known financial distress to those involved in real estate transactions nor any reduction in quality of service to home buyers.

This proposal challenges the validity of the argument for retaining the transfer fee due to “extraordinary” expenses. Extraordinary meaning such work is completed that is not routine and imposes a material and excessive work effort. The trade organization CAI, representing CAM’s, indicates the following on their web site to justify transfer fees:

“As a result of outstanding work by CAI’s Colorado Legislative Action Committee (“CLAC”), the following fees charged by associations and management companies are excluded from the definition of “Transfer Fee Covenant” *and are permitted to be charged:* “

- “. . . a one-time fee paid to a . . . management company for an association of unit owners . . . for services rendered in connection with the conveyance for which the fee is earned . . .” In other words, management companies are permitted to charge a fee related to work performed by the management company in relation to the conveyance of a unit.

Has the CAI identified the work that is “extraordinary”?

Consider the following related to extraordinary expenses by CAM’s:

If the transfer fee is to be associated with the arduous tasks of updating records and other administrative work for new residents such work hasn't been identified to be other than routine and expected work of a CAM. CAM's don't hire extra staff or pay overtime to add new residents to the community's data base and administrative systems when a home is sold: none. CAM's don't incur any costs for which they are not already paid for to process in new residents. Any one time costs such as issuing new access devices to the community or clubhouse are charged to the new resident not the CAM. Processing in new residents and/or removing the seller from the roles and systems of the HOA is very low volume work and simply done as a matter of routine and not considered "extraordinary". No costs to the CAM have been identified as unreimbursed to justify a transfer fee.

CAM's are hired by HOA's to complete, among other things, administrative work including record's updates, issuing and rescinding security keys and cards, changing names for due to marriages and divorces, updating mailing and emailing lists and related community directories, etc. This work is expected for current residents, those moving out of the community (they don't pay a fee to the CAM to leave the community), and for new residents: this is the purpose and use of HOA fees. No additional or unexpected or extraordinary costs have been identified to process new residents into the HOA, none. Contracts don't indicate that CAM's will only update records for existing residents and not update records for new residents. Contracts between CAM's and HOA's don't state if the CAM doesn't receive a transfer fee the HOA will have to pay the fee due to extraordinary cost to process in new residents. This is because there are no extraordinary costs associated with removing a former resident from the roles and entering a new resident. Repeat, this is routine, low effort, and expected work of administrative services of an HOA paid for with HOA dues.

There is also an argument to justify part of the transfer fee due to the cost of providing a new resident with HOA governing documents. Governing documents are normally on line and free to access by any realtor or home buyer. If a new resident or realtor wants a hard copy they can pay the HOA for the copying costs: this has nothing to do with a transfer that is retained by a CAM or cost incurred by a CAM.

SB 11 234, in rescinding most transfer fees, found no beneficial reason to continue the practice. The transfer fee did not add to the quality of service provided in a home sale transaction, added no extra value or services to the home owner or seller or HOA, nor did it fund any special activity or program for the benefit of the HOA, home buyer, or general public. It was not found to be required to reimburse any entity for extraordinary cost. Thus, the Bill found it an unnecessary financial imposition on consumers and repealed it for all but HOA home sales.

It would be appropriate to repeal the transfer fee on HOA home sales as no evidence exists that extraordinary costs are incurred by a CAM at any amount to process a new resident into HOA records and the community. If retained in any form, capping this fee at \$50 imposes no financial burden on any entity and would certainly compensate for any of the "extraordinary" expense imposed on a CAM.

Funding requirement: No cost to taxpayers to rescind the fee, no new funding required.

Cost – Benefit:

Cost: Cost to government to implement involves completing an administrative change to the law and thus no measureable cost to implement.

Benefit: Consumers (homebuyers) will conservatively save an estimated \$20 million for every 100,000 HOA homes sold. Reducing the transfer to a limit of \$50 would save consumers an estimated \$15 million per 100,000 home sales. Assumes average transfer fee of \$200. Eliminating the transfer fee will not affect the operational or financial health of the HOA or CAM nor will this result in increased costs to an HOA or cause HOA fees to increase. No loss of income to HOA. Elimination of a cost to home buyers/sellers that is no longer relevant or justified. CAM services to HOA's under current contracts will be unaffected.

Arguments and Interest Groups:

For retaining the fee: The argument to retain the fee would appear to come from those benefiting from charging the fee: CAM's. CAI claims of extraordinary work effort to justify transfer fee would be same as previously state.

Against retaining the fee: The Colorado HOA Forum is against this fee. No costs incurred in the sale of an HOA residence can be claimed as extraordinary or requiring a special assessment on home buyers/sellers to avoid financial hardship on a CAM or HOA. If any transfer fee is retained it should most certainly be based on cost recovery and such amount should be no more than \$50. The amount of transfer fees vary greatly and thus by this very practice indicates no relationship to costs incurred but rather an opportunity to generate revenue for a CAM. The additional administrative expenses, although routine in nature, are already paid for through HOA dues of homeowners and/or with contract costs to CAMS thus making a transfer fee an opportunity to bill for the same service twice: once to the HOA and then by the home buyer/seller.

2. Require HOA special assessments over (specify dollar amount) in HOA's with annual income over (specify dollar amount) be approved by 50 percent of homeowners.

Background: HOA special assessments can be legally approved by HOA Boards without a vote of homeowners and such monetary values are not constrained unless stated in the HOA's governing documents. A special assessment is required due to extraordinary and unplanned financial needs or other reasons such as the HOA is deficient on reserve funds to complete a capital improvement. Some special assessments, however, can be more amenity or special interest based than a critical need to the community. Thus, the question is "when should a

homeowner's vote be required" to approve a special assessment and should HOA Boards have limited monetary authority in this issue.

Special assessments can range from one time payments of low and affordable amounts to burdensome debt on homeowners to the extent that such a cost could result in financial hardship or require the sale of a home to relieve the homeowner of the debt. Special assessments, if unpaid or delinquent, can result in the foreclosure of a home. Thus, the issue of some special assessments deserves the special involvement of homeowners.

This proposal calls for capping a Board's authority to complete special assessments to a given total dollar amount on any one initiative and/or limited to a given amount per homeowner on a single initiative. This proposal is not intended to remove expected and granted financial and fiduciary responsibilities of a Board or inhibit a Board's ability to manage everyday financial management but to address extraordinary financial events that are so material that they can affect the financial status of homeowners.

This proposal would also preclude any Board from completing a special assessment of material cost to homeowners to meet the special interests of a very few in the community.

The proposal enacts HOA law to limit a Board's authority to complete special assessments independent of homeowner approval. Special assessments greater than (insert dollar amount) for any one project or purpose must be approved by a vote of 51% of homeowners.

Funding Requirement: No special funding requirement.

Cost Benefit:

Cost: The cost to implement is not measurable and only involves revising the current law.

Benefit: The benefit is to improve financial management and governance within HOA communities and to preclude any action by a Board through their approval of a special assessment that has material financial impact on homeowners without their approval.

Arguments and Interest Groups:

Opposing: Those advocating that HOA Boards should have the authority to act independently in making all financial decisions for the community

Approving: HOA homeowners that want powers and authority of Boards reined in when it comes to special assessments that are material enough to affect their financial status.

3. Require all HOA real estate transactions to include certification by the home buyer and real estate agent/broker that the following have been completed:

a. Read and understand the HOA's governing documents that explain the controls, covenants, and restrictions.

b. Obtained from the HOA a statement of any active and planned special assessments and the monetary amount associated with each.

c. The realtor/broker informs the buyer of the number of homes under foreclosure in the HOA

d. Obtain an agreement letter from the HOA concerning any repairs or maintenance work to be completed by the HOA within six months after the home sale that have been identified as the responsibility of the HOA and not the home buyer. Such issues have been identified in the home inspection report as needing to be addressed.

e. Understanding of the home rental policy in the HOA and how many rentals exists in the HOA.

f. HOA financial statement and specific analysis as to the adequacy of HOA reserve funds.

g. The amount of monthly HOA dues.

h. The total number of units in the HOA and the number in arrears on HOA dues.

Background: The listed requirements to complete an HOA home purchase will ensure that the buyer is an informed consumer, the real estate agent/broker serves their client with full disclosure, and that post purchase problems such as not understanding the community restrictions, fees, amenities, and monthly dues are mitigated. These requirements will also aid in conflict resolution between homeowners and HOA and home buyer and real estate agent as to expectations and deliverables in a home sale transaction.

This proposal will greatly help in conflict resolution between a homeowner and their HOA pertaining to enforcement of governing documents and restrictions. Homeowner can no longer claim ignorance or not being provided information on covenants when challenging such restrictions as they certified they knew them prior to purchasing the home.

Knowing the financial state of the HOA, if the community has a high rental unit and/or foreclosure rate is important to know prior to and not after purchasing a home.

Although realtors may be “expected” to inform a home buyer on these issues they are not required by law to do so and in fact it would be rare that these tasks are completed in full or even partially in most home sales and for sure are not documented or certified complete.

Funding Requirement: no funding is required.

Cost – Benefit:

Cost: The cost implement generally involves forms and procedural changes for realtors. The additional work and expense for those completing these assumed tasks will be zero. The cost to an HOA will not be measurable and involve mostly providing access to governing documents over the Internet and responding to some administrative questions. The volume for any one HOA is very little. The cost associated with identifying the number of rentals and foreclosures in an HOA is considered minor to no additional cost as realtors have access to this information from on-line data bases or via the HOA/CAM.

Benefit: More informed consumers will result in mitigating post purchase problems that are frequent in covenant controlled communities. Homeowner complaints and related legal cost/cases will be mitigated and/or not pursued when homeowners are aware of the restrictions in the community and responsibilities of homeowner and HOA Board. Homeowners will no longer be able to claim ignorance of community restrictions and rules or financial obligations in court cases when they have certified they were apprised of this information prior to moving into the community. Making these items mandatory and part of the law will ensure completion and assign responsibility to those who must complete them prior to closing on any HOA home sale.

Opposing: Real estate industry MAY contend this is already being completed and they will handle through non mandatory procedures.

Approving: Homeowners, HOA Boards both of whom will benefit by a more informed home buyer who understands the operations and governance of the community.

4. Limit fees, administrative charges, interest charges, and other collection costs on HOA debt that is less than six months in arrears to \$25 per month plus overhead charges to cover mailing costs. This also pertains to HOA debt that is being repaid under the payment plan mandated in HB 1276. This is a modification to HB 1276.

Background: Homeowner debt to HOA's can imperil the financial health of the association. When one homeowner doesn't pay their dues the rest of the homeowners must make up for the lost income. The fundamental principle to the success of an HOA is that all in the community equally share a financial burden to ensure the viability of the organization.

Collection of delinquent HOA dues is normally completed by an HOA's CAM or a legal entity. Collection practices have become abusive with excessive fees, fines, administrative costs, and interest charges. Although there should be a penalty for not paying dues, the assignment of excessive fees to a debt has an inverse relationship to the goal of collecting debt. Placing a homeowner deeper in debt when already in financial stress ensures the debt will gain in dollar value and the ability to repay reduced.

In response to abusive collection practices, HB 1276 was passed to promote an environment that would enable a delinquent debt to be repaid by offering the homeowner a repayment plan and precluding the debt to be turned over to a collection agency prior to the total debt being equal to six months of fees. Details are in the Bill.

The Bill left open a few significant issues on HOA debt collection. It did not cap fees and allows for the adding on of unlimited charges to delinquent debt during the repayment period.

This proposal would cap the amount of fees as stated above. This limit would allow for cost recovery to administer collection and would significantly improve the ability of a homeowner to repay the debt. The HOA would not lose income as they don't receive the fees, interest charges, and other assessments: the collection agency, CAM, or legal entity benefits from debt charges. The HOA would benefit when more debt is collected by reducing the financial and unnecessary burden on the debtor.

HOA debt collection fees have no relation to the costs incurred. Issuance of collection letters can range from \$25 to 50 each month, interest compounded on outstanding debt, and other service charges. These costs add nothing to increasing the possibility of collection but greatly add to the possibility of default by making compounded debt too costly to repay.

Funding Requirement: no funding required

Cost – Benefit:

Cost: No cost to implement. No cost to HOA or loss of revenue to HOA.

Benefit: HOA debt collection will increase with a reduced burden on the debtor. Homeowners will monetarily benefit by avoidance of unnecessary fees on debts.

Arguments and Interest Groups:

Opposing: CAM's and legal entities that benefit from collection fees

Approving: Homeowners who increase their ability to repay debt and avoid excessive collection costs.

5. Modify the HOA registration process to include a requirement that all persons serving on HOA Boards certify they have read their own governing documents and (to be determined) information on the State's HOA Office and Information Resource Center's web site concerning State HOA law, how to conduct meetings and elections, open access records requirements, and dispute resolution. This is a modification of HB 1134

Background: Too often HOA Board members are completely ignorant of their own governing documents resulting in violations to homeowner rights, over reaching their authority, financial mismanagement, unknowingly violating State HOA law. This can result in unnecessary law suits and costs to both homeowner and HOA in enforcing proper HOA governance. Just as CAM's (Community Association Managers) are required to be

knowledgeable in serving the HOA through State licensing, it is not unreasonable to expect that HOA Boards with the responsibility for managing the HOA's operations and finances should be required to understand the basics of HOA governance and their responsibilities.

Funding Requirement: no funding required, program is funded through HOA registration fees

Cost – Benefit:

Cost: The HOA Office maintains information on their web site that can be used to fulfill this requirement thus start-up costs are negligible.

Benefit: Improved HOA governance, mitigate homeowner – HOA Board problems and lawsuits.

Arguments and Interest Groups:

Opposing: The requirement is too burdensome.

Approving: The program will educate HOA Boards and this will reduce mis-steps and violations in managing the HOA and compliance with State law and their own governing documents. HOA legal costs will be reduced with an educated Board not making governance errors. No cost to educate HOA Board members

6. Implement an out of court dispute resolution process for most HOA homeowner complaints modeled after the Virginia system. HOA homeowner complaints in this process would be for damages under \$7,500, not felony in nature, and/or relate to non-compliance with State HOA laws or a homeowner's own governing documents. The administration of the process would be the responsibility of the State's HOA Office and Resource Center under DORA. Current State law indicates "common interest communities are encouraged to adopt protocols that make use of mediation or arbitration" in dispute resolution and thus this proposal blends and mandates these concepts into a dispute resolution process that is effective, affordable, easy to implement, and expeditious and non-complex in settling homeowner complaints. Complaints would be filed and settled in an out of court venue using med-arbs (mediators with arbiter decision making authority). Med-arbs (mediator – arbiters), would be required to complete training in HOA law and be certified mediators. Homeowners under this process are not precluded from using the court system to gain a decision on their complaint: no due process of law is lost. This proposal requires no funding requests. This modifies HB 1134 by mandating a specific process for dispute resolution vs. completing a study to identify a suggested process for dispute resolution.

Background: Enforcement provisions of HOA governing documents and State HOA law are very weak from the home owner's perspective. Homeowners only have one means to enforce their rights and that is our court system: too costly, litigious, and time consuming for homeowners. Additionally, the court process is skewed against homeowners as the HOA can use homeowner's funds (from dues) in an unlimited manner to fight the homeowner who

uses their own limited funds. Mediation is suggested in CCIOA and has been available to homeowners for decades but based on the current state of affairs that process is a failure.

Homeowners, therefore, even when 100% correct in pursuing their rights, are mostly left at the mercy and discretion of a Board as to whether to honor a homeowner's request knowing enforcement most likely will not be pursued by the homeowner via court.

To rectify this problem, Virginia implemented an out of court binding dispute resolution process (not mediation or mandatory mediation that simply adds time, cost, process, and uncertainty as to whether the case will be settled) that allows homeowners to file a complaint with the State, have it vetted for validity, and passed on to a review Board or mediation – arbiter (med-arb) for final decision: no courts, low cost, no lawyers, expeditious, and certainty of a decision being rendered.

This process is similar to what will happen when the licensing of property managers (CAM's) is implemented by the State. Complaints are handled and decisions rendered through DORA: cost effective, timely, out of court, and decision rendered.

The Virginia model is very low cost, accessible and affordable for all homeowners, expeditious vs. a court hearing, and guarantees an outcome (unlike mediation). The system has functioned in Virginia for years and is successful and proven. The program is administered by their State HOA Office, has few staff, and is self-funded. Colorado can easily adapt this process as we currently have a staffed State HOA Office, the office and this process would be self-funded from HOA registration fees and complaint filing fees, the Office has a complaint filing and review and reporting process in place, and the most effort would be in training mediators on HOA law and enabling them to render decision. No cost to taxpayers.

Homeowners are not forced to use this process and can choose instead to go directly to court with their complaint. The process would remove case load in our courts with related cost savings to taxpayers, would make dispute resolution fair and open, keep all but the exceptional HOA complaints out of court, make the dispute resolution process accessible and affordable to all homeowners, and ensure homeowners who file a complaint that when they pay any fee they are assured of an enforceable decision and can avoid court altogether. HOA complaints are normally simple in nature and involve non-compliance with State law or an HOA's own governing documents and don't belong in our court system and should not require homeowners to incur large legal costs to enforce their rights. This process also removes the deficiencies in the mediation process that asks homeowners to gamble several hundred dollars and their time in the hope of an out of court agreement else they simply spent their money on a process that provided no remedy or decision.

HB 1134 directed the State HOA to study the issue of dispute resolution of which the Virginia model was one option. This proposal goes a step further to modify HB 1134 and directs the Office to implement an out of court "binding" dispute resolution process.

Funding Requirement: no funding is required, the HOA Office is self-funded through registration fees and supplemented by complaint filing fees

Cost – Benefit: The cost to implement the system to taxpayers is zero. The program is funded by HOA registration fees and complaint filing fees. The cost to develop and administer a program to educate mediators is paid for by the mediators (most classes will exist through DORA's educational requirements for CAM's).

This process will reduce court case load and thus reduce court operating costs

Arguments and Interest Groups:

Opposing: Mediators will contend they solve cases but not all and thus mediation should be promoted. Legal and mediation groups contend that homeowners lose their right to due process (that is not true).

Approval: Homeowner groups, consumer advocates, and homeowners understand this provides due process of the law (no homeowner rights to litigate a case are sacrificed), and allows all homeowners a venue for dispute resolution that is affordable, accessible, non-litigious, and timely and provides a decision (versus the pitfall of mediation that can too often result in no enforceable decision and thus more cost for the homeowner and back to a court case). Legal costs to resolve disputes will be reduced for homeowner and HOA vs. a court case. The suggested system is proven and not speculative and delivers finality to complaints unlike mediation where many will not pursue because they can't gamble their funds on the hope of a decision and too many who do pursue (and one is too many) mediation and end up without a decision will have to go to court to bring closure which is what this process will eliminate.

7. Term limits for HOA Board members when others are available to serve.

Background: This proposal will encourage and result in more homeowners being active in HOA governance and avoid many of the problems associated with open governance that can occur when Board turnover rarely exists. Board members are elected to govern and their responsibilities are defined by State law and local HOA governing documents.

One problem well known to HOA residents is that too often turnover of the Board is very difficult through the election process that often times is characterized: by improprieties through ballot issuance and counting; manipulation of controlled community media (newsletters); and HOA minutes of meetings that only present one side (and positive for Board members) of issues or misleading minutes of meetings to preclude any negativity on the Board or community. Thus, when new faces run for the Board or candidates argue about

current HOA problems their message is doubted due to control of information from within the community. Also, election problems even to the extent of rejecting results or not holding elections makes turnover very difficult.

Ensuring turnover of Board members can also promote open governance and financial integrity and accountability. New Board members are likely to question and review daily expenses, maintenance contracts, and disbursements of funds. New faces bring new suggestions for operation and maintenance of the community or confirm the validity of existing practices. New Board members may also bring about more responsiveness to homeowner questions at Board meetings and collective governance among Board that previously may have been dominated for years by the few long term members on the Board.

Term limits will not discourage community involvement but encourage such activity. Volunteers will come forward understanding the election process can bring can change vs an exercise in futility. Term limits mitigate the impetus for manipulating elections or other community media to bolster the reputation of the Board or to retain them as new candidates by virtue of term limits will make these efforts much less likely.

True, most HOA Boards serve the community in an altruistic and trusting manner. However, too many problems with HOA governance exists that can be directly related Board members serving for unlimited terms that necessitates this proposal.

Cost – Benefit:

Cost: No cost to implement or cost to HOA's or taxpayers

Benefit: Improve open governance, mitigate HOA election and financial management problems, and improve upon the concept of homeowner participation which is the basis of HOA communities.

Arguments for and against and interest groups:

Oppose: Bill goes too far in involvement with local governance of HOA.

For: Homeowners who understand that open governance is important in managing an HOA successfully and that involves ensuring an environment that encourages homeowners to serve on Boards; breaking down barriers that discourage or bar homeowner participation in serving the community; and understanding that turnover in HOA Boards brings with it the promotion of new ideas and reviews of financial and operational practices that might otherwise be closed to members or not take place.

