

HB 14-1254, HOA Transfer Fees, and its' Deceptive Solution to Resolving Transfer Fee Abuse Ten reasons why DORA is not the solution for ending Transfer Fee Abuse

HB 14-1254 has been stripped of all meaningful verbiage and the intentions originally pursued by the House sponsor and supporters including home owners, property managers, and realtors. This Bill was intended to rein in the abusive use of the HOA Transfer Fee including: financial limits on the fee (that range from \$50-\$1000+ with no relationship to work performed); defining what the fee is specifically to be used for and what not; and addressing the illegal use of this fee by property managers to under bid on HOA contracts (anti-competitive and harms small businesses). This Bill was allowed to be rewritten by lobbyist including large property management companies (PMCs) and the CAI whose members pocket \$15 million a year without having to justify the fees. The rewrite ensures NO changes to the abusive use of this fee. The Bill promotes a solution to have DORA (Department of Regulatory Agencies) resolve the transfer fee issue but it is merely a solution disguised to ensure the abusive practices with transfer fees continues unabated.

Summary: Please consider the below ten reasons why DORA is not a workable solution and would change nothing. Discussions with DORA confirm the best result of this Bill would be requiring PMCs to loosely document their abusive and excessive fees but not inhibit detrimental and current practices. The summary facts concerning DORA providing oversight and enforcement: DORA can't challenge or limit the amount of this fee and the amount will be at the will of the PMC (from \$50 to over \$1,000); the fee can't be contested with DORA as it can't render a decision on the fees amount or use; home sellers will still not be able to negotiated or shop in the market place for a better price for this service; DORA can't question, restrict, or direct a PMC to refund any fee; home sellers will still be required to accept any amount of fee involuntarily imposed on them; fees may have to be documented at some marginal level but the amount associated with the billing will remain uncontestable; DORA will not provide the home seller a venue in which to dispute the fee so the home owner will be forced to go to court for remedy; and any opinion or questions by DORA concerning a fee would not be preclude the requirement to pay the fee prior to selling a home. Furthermore, the most common abuse relates to the illegal use of this fee by large management companies to under bid and win HOA contracts with the anticipation of subsequent transfer fee income. This is not the authorized use of the fee but is a common use and DORA is powerless to end this practice. **This Bill is empty on containing abuse but heavy on a deceptive solution and should be vetoed.**

The following provides details on why the solution offered in HB 14-1254 is empty and resolves nothing:

- 1. DORA has never agreed to be part of the solution to reining in transfer fees nor has it indicated it has the authority and/or infrastructure to contain abuse.**
- 2. DORA can't limit this fee as that would be contrary to existing law, SB 11-234. So, fees of \$50-1000 will continue to be assessed on home sellers with charges having little to do with work performed. This Bill provides no authority to DORA to question or limit fee amounts.**
- 3. DORA can't define what the fee can be used for as this is stated in SB 11-234: DORA can't change the law, it only implements law. The best it can do is issue ambiguous and general guidelines that will be empty and ensure no change in current practices. This Bill indicates DORA will require the fee to be documented at some level but this only means that abuse will have to be documented: this accomplishes nothing.**

4. DORA can do nothing to end the illegal use of this fee by large property management companies that use the fee to underbid and win HOA contracts with the anticipation of future transfer fee income. DORA has no mission or enforcement authority to stop this practice.

5. DORA is not prepared to handle the hundreds of complaints it will receive from home owners if they are deemed responsible for investigating transfer fee abuse. They don't have the staff or budget and thus assigning DORA this task has no substance or feasibility.

6. DORA is not directed through this Bill or by any other law to develop enforceable specifics on the use and misuse of the transfer fee or impose dollar limits to enable decision making on excessive fees. Any suggestion they can be effective in rendering decisions on complaints (which they are not authorized to do) without this rule making and enforcement authority is baseless.

7. DORA, with licensing property managers or through this Bill, can't advise or direct any property manager on what to charge or the appropriate use of the fee. Thus they are rendered irrelevant in addressing and ending transfer fee abuse.

8. This Bill suggests that all fees collected by third parties must be identified and require HOA Board approval. DORA will monitor this requirement. There is no evidence this will accomplish anything as most HOAs are managed and run by property managers who will easily gain approval with the same unexplained, unjustified, and spurious contentions that to date have not been supported by need or fact. This approval process has been placed in HB 14-1254 to make the appearance of approval but in reality will accomplish nothing.

HOA Boards and home owners will continue to be misled by the CAI (Community Association Institute) and property management companies (as they do today) to think the fee at any amount is mandated, justified by costs incurred, and/or common practice. PMCs will also find methods to gain approval of fees at any level through the HOA – PMC relationship and unless these fees are defined and amounts limited abuse will continue. Thus a fee of \$50 or \$1000 will be explained to the HOA Board as required with the false argument that contract costs will increase if the fee rate is mitigated: no such evidence exists as many PMCs charging \$50 are successful and profitable. The transfer fee work is routine and not extraordinary and thus if the PMCs contract with the HOA was based on expenses plus a profit margin no increase in costs would occur to the HOA. Those PMCs that charge reasonable fees will thrive and those large companies misusing the fee and with excessive charges will have to change their business model and contract bidding process to consider expenses plus a profit margin and not based their success on imposing excessive fees on home sellers to compensate for their deceptive business practices.

9. DORA through licensing PMCs can't direct a property manager to do anything including refunding in part or in full a fee deemed excessive or improper in us. The home owner will be forced to go to court to fight abuse and that is too costly and time consuming thus abuse will continue.

10. The misinformation campaign by lobbyist implies DORA approved and/or collaborated to develop a solution that included DORA as the method to rein in transfer fee abuse is FALSE. The DORA solution was floated by lobbyist when, based on their own web site postings, the original Bill was gaining favor and they needed to respond with a tactic to either kill the bill based on its' lack of merit or to develop a strategy to modify the Bill ensure the transfer fee use

continued unabated. When lobbyist arguments to continue the fee on merit fell short, they decided to work to rewrite the Bill on their terms: with no limits or controls over the fee and push their problem to DORA with the appearance of problem resolution but in fact accomplishing nothing.

Unless this Bill is changed to include amount limits and rules on the use of this fee it is meaningless and will change nothing and should be vetoed. This Bill is a solution disguised to change nothing.