

A Homeowners Association (HOA) White Paper

## Understanding HOA Home Sale Transfer Fees

**Case Study: Highlands Ranch Community Association, Highlands Ranch, Colorado**

*A Comprehensive Analysis of the maze, cost, and abusive practices with HOA home sale Transfer Fees*

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**Understanding HOA Home Sale Transfer Fees**  
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**A Comprehensive Guide through the maze, cost, and abusive practices of HOA Home Sale Transfer Fees**

**Introduction:**

To understand how the Homeowner's Association (HOA) home sale and refinance Transfer Fee money grab works you need some background about: who really manages most HOAs; HOA dues/fees; the role of the Highlands Ranch Community Association (HRCA); HOA property management companies (PMCs) in your community; and Title Company information needs at home closing. With this basic knowledge it will be explained how HOA Transfer Fees allow PMCs and HRCA to duplicate bill home owners for work they already paid for with their HOA dues and HRCA fees. Although we are focusing on Highlands Ranch, Colorado, the findings presented are applicable to most HOAs.

Highlands Ranch, CO was not chosen for this case study due to any record of abusive/unusual practices associated with HOA Transfer Fees (more than any other HOA. It was chosen because with its' 25+ independent and diverse HOAs along with a recreation district involved in HOA governance it provided a broad perspective and frame of reference into the financial aspects of the use of home sale Transfer Fees. Highlands Ranch is one of the largest, older and most popular residential communities in Colorado. There are over a dozen PMCs operating within Highlands Ranch and all charge a home sale Transfer Fee

In this study, a PMC is synonymous with Community Association Manager (CAM) and HOA property manager. PMCs are licensed in the State of Colorado.

**HOA Governance, dues and HRCA Recurring Fees**

HOAs have an elected, volunteer Board of Directors to manage the affairs of the community. HOAs hire PMCs to complete operational and maintenance tasks for the community and to provide guidance in managing the affairs of the community in accordance with HOA State laws and HOA governing documents. Regardless of the elected Board, nearly all HOA management and financial decisions are highly influenced by PMCs.

Highlands Ranch is comprised of over 25+ independent HOA's and the HRCA (a governing authority for covenant enforcement and provider of recreational activities and facilities). Most HOA's independently hire their own PMC and assess monthly dues on home owners. The HOA dues are used mainly to pay the HOA's PMC to complete ordinary administrative and maintenance tasks. Examples: updating records for name changes, divorces, deaths, marriages, etc.; changing bank accounts from which dues are collected; accounting services; HOA dues billings and collections and delinquent notices; covenant enforcement; snow removal and lawn services; and a host of other baseline services. Home owners are (should be) made aware of what services are provided through their HOA dues prior to closing on the home: no law mandates this. HOA dues generally range from \$100-500 a month or more depending on services provided.

HRCA also assesses separate Administrative and Operation and Maintenance fees (nothing to do with HOA dues related to PMC services) on every home owner on a quarterly basis. The fees vary by HOA and are determined mainly by the services provided from the HRCA: (1) all home owners are assessed an administrative fee (\$49 a year) to cover expenses related to HRCA administrative functions, architectural control and covenant enforcement, billings and collections of fees and fines, accounting and finance services, and managing community events/amenities (2) most home owners also pay an O&M fee

(\$530 a year) as a user fee for the recreational centers and to maintain the amenities of the community. The obligation of the home buyer to pay these fees is explained prior to home closing.

There is no law requiring full detailed disclosure and explanation of HOA, PMC and HRCA dues/fees. There is no State law requiring a home buyer to certified they read and understand all HOA dues/fees.

This document doesn't question the justification and need of recurring HOA dues and HRCA fees that support community services.

### **Home Sale Transfer Fees: assessed by PMC and HRCA and contesting the fee**

\*\*\*Note: The HOA home sale Transfer Fee is neither required by nor benefits your HOA, the amount is not determined by your HOA, and it is not required by law. Home sale Transfer Fees shouldn't be confused with "buy in" fees paid by a home buyer as a membership fee in a country club, prepaying HOA dues, to fund capital improvements, or other assessments for the benefit of the HOA.

If you live in Highlands Ranch, Colorado, and sell your home (or refinance) you will most likely pay the following fees: PMC HOA home sale Transfer Fee, HRCA home sale assessment Transfer Fee, and Title Company Transfer Fee (assessed the Title Company by the PMC but paid for by the home seller). These fees "supposedly" represent reimbursement to the PMC/HRCA for uncompensated and extraordinary expenses incurred due to the sale of a home. Home owners are billed separately and independently by the PMC, HRCA and Title Company and the fees are all paid by the home owner at home closing.

Home owners are first aware of the Transfer Fees on the day of home closing. If you don't pay the fee you don't close on your home. Your only means to dispute the fee as being excessive, illegal, or duplication of charges you have paid for with your HOA dues is through our costly, time consuming, and litigious court system (and only after you have paid the fees at closing). Suing the HOA/PMC for the recovery of Transfer Fees in Small Claims Court can cost thousands of dollars. You should hire a lawyer because your HOA/PMC will arrive in court with legal counsel. The cost of your legal fees will be much more than the recovery of any Transfer Fee. If you win your case there is no guarantee you will be awarded legal costs: thus you win but could still financially lose. If you lose your case you will end up paying the Transfer Fee, your legal costs, and most likely the HOA/PMC legal costs and be out thousands of dollars. Seriously consider the cost-benefit of going to court. Until there is an affordable and accessible out of court binding dispute resolution process for these disputes and laws change on requiring full disclose of fee court should be avoided.

The home seller can dispute the fee with the Department of Regulatory Agencies (DORA) through a CAM Complaint claiming a dishonest business practice or excessive fees. CAMs are licensed in Colorado and the program managed by DORA. The cost to file the complaint is zero. Since DORA, in its' rules making capacity, has placed no controls or constraints on Transfer Fees including no requirement to provide the home seller with a receipt that could be the basis for a complaint, this means to protest a Transfer Fee may be difficult to gain any remedy. Note, if DORA finds the CAM in violation they can only fine the PMC or revoke a license but can't demand a refund to the home seller.

Transfer fees are costly and imposed with no requirement to justify or document the charges to the home owner or in the PMC contract with the HOA. The PMC Transfer Fee on average is \$350 (PMC industry study). HRCA Transfer Fee is \$155 (\$55 for a refinance). Title Company Administrative Fee (aka PMC Transfer Fee charged the Title Company) averages \$125-200. This quickly adds up to real money of nearly \$600+ all which the home owner had no idea would be assessed, doesn't understand why it is charged, first finds out about it on the day of closing, is mostly falsely told the HOA determines/requires/retains the fee, will not receive a detailed receipt identifying work completed to justify the assessment (no other business in the State can get away with this) and if not paid you can't sell your home. Furthermore, most Realtors misunderstand or are not knowledgeable of the Transfer Fee and encourage home sellers to pay it no questions asked. Note, the PMC Transfer Fee has no legal

dollar limit, is never justified/documenting work completed to earn the fee, and there are no industry or State standards for charging the fee. State law allows for charging the fee for work completed by the PMC unique to the sale of the home for which they have not been compensated for in their contract with the HOA BUT no justification or documentation is required. In Colorado the fee can range from zero to \$50 to over \$1,000 with no special work completed at the lower or high end of the fee to justify the difference in assessment: it is shut up and pay it or you don't sell your home! If you live in a sub-association the total of all Transfer Fees can be hundreds of dollars more (see below)

### **Home owner and HOA awareness, understanding and legal authority to charge the Transfer Fee and Full Disclosure Requirements**

\*\*\*There is no legal requirement to charge, document, or explain the Transfer Fee to home buyers or to explain to the home owner laws restricting the assessment of the fee. The fee is charged because it can be, without question, justification, or dollar limit.

When you purchased your HOA home you were notified about HOA and HRCA dues/fees but almost certainly never explained home sale Transfer Fees. Your Realtor should've informed you about the Transfer Fee but in reality they don't and they don't understand the fee nor are they aware of its' existence, authority, and purpose. The only documentation of the PMC Transfer Fee is buried in the HOA's contract with the PMC (most likely a very brief one liner requiring no explanation) and in HRCA governing documents. These documents are not part of disclosure to the home owner at the time of home closing. There is no legal requirement to provide the home owner or HOA with an explanation or receipt detailing the billing of Transfer Fees. The State Department of Regulatory Agencies (DORA) that regulates PMCs doesn't require them to provide a detailed receipt for billings to home owners in its' PMC (aka Community Association Manager (CAM) licensing rules nor does it require the PMC to certify that the Transfer Fee charges are in compliance with State and Federal laws (see below) and that all charges are only incurred during the sale of the home and not otherwise already paid for with HOA dues.

PMCs convince HOA Boards during contract negotiations that the fee is mandatory to recover extraordinary costs incurred during the sale of a home (mostly this discussion never happens). A simple one line declaration is inserted in a lengthy contract authorizing the PMC to collect Transfer Fees. Most Board members are volunteers and not property management specialists and don't demand a justification of the fee and thus the fee is accepted as justified and a default industry practice. It would also be a very rare event to have the HOA Board or PMC explain to home owners or home buyers why a Transfer Fee is charged.

There are no State/Federal regulations/laws requiring a PMC to certify the fee is in accordance with the law. State law addresses Transfer Fees (SB 11-234) and permits the assessment when the fee represents reimbursement to the PMC for costs incurred due to the sale of a home and not otherwise paid for with HOA dues. FHA/HUD loans generally preclude HOA Transfer Fees unless they benefit the HOA (not a third party such as a PMC). Consumer protection laws forbid the duplication of charging and deceptive business practices (explained below). No law limits the amount of the Transfer Fee or even requires it be reasonable or justified by work performed and since no detailed receipt is required, challenging any charges is next to impossible. Thus awareness and knowledge of this fee remains a mystery to the home owner until they sell their home at which time it is simply too late. No viable and affordable process is available to challenge the Transfer Fee billing other than our court system (meaning little to no enforcement when laws are broken). Further, with home sellers first finding out about the fee on the day of home closing there is simply no time to question the fee.

DORA through the PMC (Community Association Manager Law (CAM))licensing law has defined/permitted full disclosure of Transfer Fees to be met with a one-liner in a PMC contract with the HOA and on home sale closing documents. DORA has refused requests to require PMCs to provide home owners with a detailed receipt indicating: work performed to earn the Transfer Fee; a statement that charges to the home owner and/or Title Company don't represent any services already paid for with HOA dues and don't benefit the HOA; the fee is being charged to recover unreimbursed expenses incurred by

the PMC due to the sale of a home; the fee is not required by law and amount is determined and retained by the PMC; and that the Transfer Fee meets legal requirements in State and Federal laws. None of these disclosure requirements imposes a financial burden on any PMC! Updating licensing rules doesn't require new legislation.

PMCs have continually avoided and been legislative roadblocks to full disclosure as mentioned above. The "claimed" work justifying the fee is no more than tasks already paid for by the home owner with their HOA dues and is anything but extraordinary and unique to the sale of a home (see below). When PMCs were asked about documenting their Transfer Fee expenses on a receipt they told a legislative committee they couldn't specifically identify the charges and that producing a hardcopy receipt cost too much: this alone would indicate the fee is anything but justified let alone quantifiable. PMCs, on the other hand, have no difficulty in charging the fee for very specific amounts!

***The remainder of this document will explain how Transfer Fees are simply duplicate and triplicate (and at times quadruplicate) billing practices and income enhancement on steroids for the HOA PMCs and the HRCA and typifies complaints of HOA home owners about excessive, unjustified and unknown fees charged only "because they can".***

**Who benefits, determines and retains the Transfer Fees, the list of all Transfer Fees, and the Cost to Home Owners?**

PMC Transfer Fee: Home owners should understand: not one nickel of the PMC Transfer Fee benefits the HOA: the amount is determined and retained by the PMC, can range from zero in some HOAs to over \$1,000 but mostly averages \$350, there is no dollar limit placed on the fee and no justification or explanation is required and if not paid the home sale is stopped. It is not uncommon in Highlands Ranch to pay \$600+ in Transfer fees upon the sale of a home. Note, some PMC HOAs charge no Transfer Fee as it is understood all work contended to be completed related to the sale of the home is deemed to be "ordinary" services already paid for with HOA dues. If you live in an HOA sub-association and have your own PMC you could be further assessed another full home sale Transfer Fee in addition to the "parent HOA" or your Transfer Fee.

HRCA Transfer Fees are set by HRCA governing entity and have little to do with expenses related to the sale of a home. The fee is primarily an opportunity to enhance income. HRCA transfer fees are retained by the HRCA and lawyers (within or outside the HRCA) who excessively charge for an unnecessary and not legally required estoppel letter (fancy name for a final billing). The estoppel letter is also referred to as a Status Letter that certifies the home owner's account status with the HRCA: aka a costly "final billing" statement. The authority to charge the fee is in HRCA governing documents that are mostly unknown to the home owner and were only recently updated to reflect the fee/rate.

Note, the HRCA reorganized in 2016 and dropped its property management services to HOAs (home owners). HRCA, prior to reorganization, charged a PMC home sale Transfer Fee. Upon reorganization, HOAs had to contract for their own PMC lawn services, snow removal and administrative and financial services previously completed through the HRCA. Each HOA now charges an independent and separate PMC Transfer Fee upon the sale of a home (retained by the PMC). The reorganization put the HRCA in a position to lose \$250-300,000 a year in Transfer Fee income that it used to assess home owners in PMC Transfer Fees. In order to continue this flow of income HRCA modified its' governing documents to assess an HRCA Transfer Fee even though it wasn't performing the previous contended home sale services. Thus the HRCA Transfer Fee has little to do with recovering costs incurred due to the sale of a home but is mostly an (unknown to home owner) income enhancement opportunity out of the wallets of home sellers. HRCA even charges a Transfer Fee when you refinance your home.

The Title Company can also be assessed a Transfer Fee by the PMC. The Title Company requests the PMC to provide a copy of the home seller's final billing and a copy of the HOA governing documents. The fees normal range is from \$100-200. The Title Company recovers the fee by charging the home

seller. Thus another fee charged by, determined by, and retained by the PMC and mostly for services already paid for “originally” with HOA dues and with the PMC Transfer Fee to the home seller.

### **PMC and HRCA “Justification of the Transfer Fee”, Duplicate/Triplicate++ Billing Practices, Income Enhancement Schemes, Excessive Fees**

\*\*\*HRCA states if an owner contacts their office for a statement of account they do not charge as this is an expected and ordinary service to the home owner. Other services requiring no additional charge concern changes in records for a divorce, death, bank account change, marriage, etc. PMCs also don't charge for these ordinary services that are included and paid for with HOA dues. Why are additional charges for these services only levied when a home is sold? A more detailed look:

#### 1) Unreimbursed expenses justify PMC Transfer Fees:

a) Producing a Status Letter. **PMC Justification:** This document indicates the home seller's financial status with the HOA: are dues paid up-to-date, any special assessments outstanding or fines. Issued to the home buyer/Title Company (they charge both for the same letter). PMCs contend the Status Letter involves extraordinary and material costs not compensated for in their contract with the HOA. **Reality:** Duplicate Billing. The Status Letter is nothing more than a final billing and reflects the current account status of the home seller. The final bill doesn't legally or otherwise require any special certification by law (estoppel letter) or by the Title Company (see below on invoice “stacking” of charges). No special research is required except in extraordinary cases. No other business charges you to get a final bill! Billing and collections are considered baseline services already paid for by the home owner with their HOA dues. Home owners can obtain a copy of their latest account status at no cost at any time except when they sell their home? In extraordinary events, a PMC will be directed to complete more extensive work and should be compensated and describe such work on a detailed receipt to the payee.

b) Administrative Services: **PMC Justification:** The other component of the PMC Transfer Fee is supposedly to reimburse the PMC for administrative tasks only incurred when the seller moves out and the new owner moves in. **Reality:** Duplicate Billing: There is no difference between updating records for a departing or new resident than ordinary work to update records when a home owner changes their bank account for paying HOA dues or requires updates to records due to marriage, divorce, a death in the family, someone moves in or out, a home owner changes a security code or gets a parking pass. These are services already paid for with their HOA dues. A copy of HOA governing documents can usually be obtained by the buyer/Realtor/Title Company from the HOA web site. If a special request to place on a CD then the PMC should charge for that work to get reimbursed the 10 minutes work, cost of CD, and mailing.

#### 2) HRCA Home Sale Transfer Fee/Assessment

a) **Justification:** HRCA charges a Transfer Fee to get reimbursed for producing an estoppel letter (\$150) to the Title Company/home seller. This is authorized in the HRCA governing documents. **Reality:** Income Enhancement and Duplicate Billing. HRAC, as previously mentioned, received \$250-300,000 dollars yearly income on Transfer Fees prior to reorganization in which they dropped previously performed property management functions. To ensure this “income opportunity” continued it updated governing documents to authorize a home sale Transfer Fee at a higher amount than previously charged. The primary, if not only, justification to charge the fee is to produce an estoppel letter on the home owner's financial status with the HRCA This is neither required by law or by any Title Company and involves “invoice stacking”. HRCA also charges \$50 to any home owner refinancing to produce an estoppel letter. This same letter costs \$150 when selling a home but only \$50 when refinancing and nothing when requesting it on demand. HRCA appears to be using the home sale transfer fee/refinancing fee as an outright income enhancement scheme and does well in disguising it as a billing to recover legal costs to produce an unnecessary estoppel letter. There is no requirement to produce a costly estoppel letter to the Title Company: the home owner's billing statement on HRCA letterhead is sufficient. Also

note the home owner is paying \$49 a year for HRCA administrative services that includes billings and collections. Thus, charging for a final bill (the estoppel letter) or upon refinancing simply represents duplicate billing.

### 3) PMC Title Company Transfer Fee

**Justification:** The PMC also charges the Title Company a fee to provide them with a copy of the home owner's final billing and HOA governing documents. The PMC claims this cost is not included or compensated for in their contract with the HOA. **Reality.** Triplicate Billing. If a home seller/Realtor/Title company wants copy of the governing documents they can get it free of charge from the HOA web site, through a simple file transfer from the PMC, or have it emailed to them with a minimal processing fee. A copy of the home owner's final billing is not an extraordinary event requiring special certification but a routine event paid for with HOA dues (and again with the home sale PMC Transfer Fee). Billing the Title Company thus results in triplicate billing. The charge to the Title Company by the PMC is typically \$100-200 and is paid for by the home seller (or buyer). This fee is disguised and named "Administrative Fee" on closing documents: no receipt/invoice.

### 4) Excessive Costs

The rare exception is when Transfer Fees are relative to the contended extraordinary home sale expenses incurred by the PMC. If the expenses are material as claimed then the PMC should be able to clearly document the work performed, hourly rate, and when completed on a detailed receipt and they refuse to complete this task. The disparity among PMCs in the amount charged, zero to over \$1,000, makes clear that charges have little to do with work performed and more to do with what can be charged. PMC and HRCA claims that an estoppel letter certifying the home seller's financial status with the HOA is required in not supported in any law. The cost of the estoppel letter of \$100, 200 or more is excessive.

### 5) Transfer Fees are an anticipated income and anti-competition and anti-small business in nature

PMCs competitively bid for HOA contracts. If in computing a bid, a company anticipates that a certain number of homes will be sold they can multiply that number by the amount of Transfer Fee and under-bid by that amount. This provides larger, well-funded PMCs with an ability to underbid in anticipation of the Transfer Fee income. The erratic income stream from Transfer Fees is not an option with smaller companies with tight operating margins that depend on a steady income stream. This advantage to larger PMCs grows with the size of the HOA and is an anti-competitive bidding scheme.

### 6) PMC Transfer Fees to the Extreme: Sub Associations

If your HOA is a sub-association you can be hit with another Transfer Fee duplicating that which your "parent" HOA can charge you. Sub-associations in general are HOAs that have a legal or administrative relationship with another "parent" HOA related to contracting for services. The sub-association retains its' own elected Board and governing documents, may collect their own HOA dues, enforce their own local covenants, maintain their own facilities, manage their HOA events, etc. Sub-association HOA dues negate the need for the parent HOA to assess any dues to the sub home owners as the sub's dues to their HOA are meant to cover all services provided by the parent and the sub. The parent-sub relationship normally exists to allow many HOAs to collectively contract with a PMC for certain tasks such as billings and collections, snow removal, and landscaping. HOAs can benefit in this arrangement through their larger, combined number of homes in contract negotiations. The parent HOA generally assumes primary responsibility with the PMC in contract management. Note, the sub association may also contract with a PMC for selective services.

When a home is sold in a sub association the home owner can end up paying a Transfer Fee to their HOA (PMC) and to the parent HOA PMC. Homeowners should review their governing documents to understand what Transfer Fees are charged.

### **“Invoice Stacking” of Charges to Justify Transfer Charges**

PMCs will often practice “invoice stacking” to justify (but never document) Transfer Fees. This basically involves declaring that additional work must be completed to close out the home sellers account. For example: 1) providing an estoppel letter not required by law: a normal final billing will suffice 2) completing property inspections that are not required. This is an ongoing, year around task. The PMC is not certifying the property for suitability, habitability, or condition. This is a home inspector’s task. Covenant violations are also an ongoing task paid for with HOA dues 3) completing credit background checks on either the seller or buyer: not PMC responsibility 4) searching for liens on the property: Title company does this 5) separate certification of any PMC documents provided to the Title company, seller, or buyer: if the records were accurately maintained throughout the year this is not necessary 6) certified copies of HOA governing documents; not necessary as the PMC and HOA have the official copies and mostly free on their web sites, this is public information 7) special requests from mortgage companies or other financial interests should not go beyond the financial status of the home seller with the HOA. Any such special service should be billed as a separate transaction and not be part of the home closing or home closing Transfer Fee.

### **Death, Marriage, Divorce, Buying a Boat: No difference than home sale for PMC and HOA**

The argument that a home sale results in extraordinary expenses for the PMC beyond that paid for with HOA dues is weakened when one inspects work completed in relation to a death, marriage, divorce, etc. These events a very similar to when a home is sold: changes in checking account information, HOA directory and related lists of current home owners, issuing/canceling security codes, distributing or collecting any security keys, updating mailing and telephone lists, etc. Thus why only charge for these services when a home is sold?

If a home owner seeks to buy a boat, an expensive RV, or a vacation home, the finance company may seek their a copy of their latest billing statement with the HOA indicating whether their dues are current or any other outstanding obligations. No charge is made for, or should be, for this service as it has already been paid for with HOA dues. Why charge for this similar service when a home is sold?

Thus charging a home sale Transfer Fee is an opportunistic income enhancement scheme and represents a double billing for services already paid for.

### **Just because it is in the PMC HOA Contract Doesn’t Make it Legal or Honest**

PMC’s will contend if HOA Transfer Fees are in their contract with the HOA they are legal, period. Wrong. What if the contract included clauses indicating the PMC will not service the needs of the disabled or minorities, it would not comply with any State HOA Laws, or it didn’t have to comply with State and Federal health and safety laws concerning chemical spraying? What if the contract stated the PMC will collect HOA dues and deposit them in their own accounts or they will withhold HOA records from being released to home owners? The PMC would say all these restrictions are legal and not contestable because in their contract with the HOA. Of course they would be wrong. Back to Transfer Fees. PMCs revealed in an HOA contract don’t get a blank check of acceptability or legality. Transfer Fee usage still must be in compliance with State and Federal laws, can’t represent duplicate billing practices or deceptive billing practices. Fortunately for PMCs there is no venue to contest HOA fees and DORA in its’ regulatory role doesn’t require much disclosure and will allow any fee for any amount never to be questioned.

### **Truth in Billing, Duplicate Billing, Full Disclosure, and Full Disclosure Licensing Rules that allow PMCs compensation for work performed:**

Any expenses incurred by the HOA PMC, HRCA, or Title Company resulting from the sale of a home that have not already been paid for with HOA dues or other administrative assessments should be billed to

the home owner with a documented receipt of work performed to earn the fee. Requiring meaningful full detailed disclosure of fees billed would identify whether the charges are extraordinary and specifically related and unique to the sale of a home or duplicating charges for services already paid for with HOA dues. PMCs refuse to issue invoices.

PMC Transfer Fees that result in duplicate (and triplicate) billing can be considered a deceptive business practice and fraudulent and should end. DORA can immediately include in PMC licensing laws meaningful full disclosure as previously discussed: DORA can also require PMC Transfer Fees be documented to the home owner by way of a receipt and explanation of the fee in HOA contracts with PMCs. DORA should require in PMC licensing rules that all fees charged must comply with State law, SB 11-234 and FHA/HUD regulations and investigate all related consumer complaints. Non-compliance with licensing rules can result in fines and/or loss of a property manager's license.

Prior to the day of home closing home sellers and buyers should be made aware of all Transfer Fee related billings and have the ability to challenge such charges without jeopardizing the sale of their home. Home buyers and current HOA residents should be apprised of all Transfer Fee related obligations with a meaningful and detailed explanation that indicates such charges are unique and extraordinary and compulsory in the sale of the home.

Legislation modifying the PMC licensing law and/or DORA modifying the licensing rules to require the aforementioned immediately resolves most issues with duplicate and triplicate billing practice and excessive fees.

### **HOA Transfer Fees are NOT Financially Beneficial to HOAs**

First, Transfer Fees are retained by the PMC NOT the HOA. The contention that HOAs financially benefit by allowing PMCs to bid lower on a contract in anticipation of Transfer Fee income is baseless. Any compensation to a PMC from the HOA or Transfer Fee is an assessment on the HOA. HOAs are comprised of home owners. Home owners pay dues to compensate the PMC. All home owners are treated equally in an HOA. The governing documents of the HOA never defined any scheme to penalize home sellers to subsidize a low bid PMC contract. PMC contracts with the HOA never indicate that Transfer Fees are to be used as anticipated income to low bid on the contract with the HOA. If this low bidding with anticipated income from Transfer Fees is known to the HOA Board when awarding the contract, the Board would be acting recklessly and breaching their fiduciary responsibilities. Anticipation of income can place a PMC in financial jeopardy if amounts fall short. This could mean an inability to fulfill contract obligations and reduced services to the HOA. Thus, using Transfer Fees to allow for low bidding on HOA contracts or otherwise assessed: 1) is a reckless contracting practice if executed by HOA Boards and deceptive if practiced by a PMC. HOA services under the contract are jeopardized by anticipating income 2) is an illegal use of Transfer Fees as State law indicates the fee is assessed to recover unreimbursed PMC costs related to the sale of a home 3) the total cost to the HOA (the HOA is home owners) is not beneficial and 4) the Transfer Fee is mostly an income enhancement scheme that results in total charges to the HOA being more not less. THERE IS NO FINANCIAL BENEFIT TO THE HOA.

### **Legislative Efforts and HOA Advocacy Organizations**

Home owner's advocacy organizations throughout the United States continue their efforts with legislators to rein in this abusive practice. Transfer Fees cost Colorado home owners upwards of \$10 million a year. Nationwide the fee costs hundreds of millions. In Colorado the Colorado HOA Forum, [www.coloradohoaforum.com](http://www.coloradohoaforum.com), has led several legislative efforts to reform this fee. Note, in every case the Community Association Institute (CAI), the trade organization for HOA property managers and HOA lawyers, has worked to defeat/water down each proposal:

1) a Bill to limit the Transfer Fee in amount to \$100 requiring any amount over the limit to be clearly defined, justified, and documented.

2) a Bill to require the PMC to provide the home seller with a receipt documenting in detail all work completed to earn the Transfer Fee and a certification that the billing is in accordance with SB 11-234 and FHA/HUD regulations and no charge represents a duplication of billing that has already been paid for with HOA dues

3) a Bill to require full and meaningful disclosure in PMC contracts with the HOA concerning fees charged to home owners to include explanation and justification for the fee, a requirement that all fees assessed home owners be accompanied by a detailed documented receipt indicating by line item and charges work performed, and a certification that such fee is in accordance with State and Federal law.

4) Requested DORA modify the PMC licensing rules to require disclosure stated in items 2 and 3 above.

### **Identifying Transfer Fee Duplicate Billing and Invoice to the Home Seller**

Identifying Transfer Fee duplicate billing practices (paid for first with HOA dues and then again with a separate Transfer Fee assessment) begins with: 1) **HOA Contract with the PMC:** The PMC contract with the HOA must mention that a Transfer Fee will be charged. However, this is by no means full disclosure or justification. The contract should include explanations as to why the fee is charged, confirmation that it is in compliance with State and Federal law; that the fee doesn't represent/charge home owners for that which is already paid for with their HOA dues; that all fee charges have occurred as a result of a home sale; that in the event Transfer Fees are not collected due to low or no home sales the PMC will still be able to complete contract obligations because the contract fulfillment and cost is not related to anticipated income from Transfer Fee; and that all home sellers assessed fees will be provided a detailed invoice displaying line item tasks and related costs incurred due to the sale of the home to earn the fee and that all charges are in accordance with State and Federal law and don't represent duplicate charging of any services expected under the HOA contract. 2) **Invoice to the home seller (payee):** Home owners charged a Transfer Fee must receive a detailed invoice with all the confirmations and detail as listed in the HOA contract (item 1 above).

The invoice to the home seller is the basis upon which a home seller can determine if the fee meets all the mandates described in the HOA contract (mentioned above) or are the charges duplicative of services paid for with HOA dues that are considered and not unique or caused by the sale of a home. There is nothing about an invoice to support a demand for payment that is a unique business practice and PMC Transfer Fees should not be exempted. There is no extra cost to the PMC to produce an invoice: it is expected. PMC's provide HOAs with an invoice for all work performed under their contract but refuse to provide a home owner with an invoice to support the Transfer Fee.

### **PMCs fight efforts to require home sellers be provided an invoice for Transfer Fees**

Consumer groups have proposed legislation to require a PMC to provide the home seller with an invoice upon demand for payment of Transfer Fees. The Community Association Institute (CAI) which is the trade organization for property managers and HOA lawyers have successfully worked to block this requirement. Their insulting reason was that although they can readily bill the home seller it's just too costly to produce a final billing nor can they identify the expenses for which they are billing (this stated during legislative hearings in 2016). Do you think COMCAST, Xcel Energy, your auto mechanic, or anyone else would get away with this? This resistance to providing documentation quite clearly

represents they are hiding something. That something is that they are assessing this fee not in accordance with the law, that the fee simply represents duplicate billing of work already paid for with HOA dues, and that they can't justify the billing based on work performed and by amount billed.

### **Conclusion:**

HOA home sale Transfer Fees are income enhancement schemes practiced by PMCs and, in this case, also the HRCA. The fees have mostly nothing to do with billing home owners for unreimbursed PMC expenses in relation to the sale of a home: it is charged because it can be, collected on demand without accountability or documentation because it can. The fee represents duplicate/triplicate billing practices for services first paid for by home owners with their HOA dues and then again charged to home owners upon the sale of their home: deceptive, duplicate and fraudulent billing practices. Transfer fees can violate State and Federal laws with no accountability or ability for home owners to challenge such violations. DORA is an enabler of this deceptive billing practice by not requiring in CAM licensing rules full and meaningful disclosure of this fee in PMC contracts with the HOA and on an invoice to the home owner at home closing: they determined a one-liner meets full disclosure and documentation requirements.

The fees represent excessive, and from the home owner's perspective, indisputable charges for contended work performed that are never documented. PMCs are involved in "invoice stacking" that inflates work performed to justify the fee: estoppel letters, researching liens, communication with financial institutions not part of PMC responsibility, certification of documents not required, and/or inflated charges for providing copies of HOA documents, .

Legislative reform is hindered by the Community Association Institute (CAI) and their powerful and well-funded lobbying efforts that have thwarted efforts on meaningful full disclosure of fees and providing detailed invoice to home owners.

PMC demand billings to home owners for Transfer Fees with no invoice or justification of work to earn the fee represents a business practice unique in Colorado (and the U.S.). No other business can demand payment without documenting work performed. DORA and the State Legislature have rejected demands for providing receipts to home owners. Without a detailed receipt home owners would not have a basis for challenging the fee and this also supports/enables practices of excessive billings, ranging from \$50-1000, "because it can" without any accountability.

### **Recommendations:**

All HOA home sale Transfer Fees must be documented on an invoice to the home owner indicating work completed by line item charge; provided to the home seller three days prior to home closing; the invoice includes statements as to compliance with State and Federal laws; and includes a statement that all charges are unreimbursed expenses to the PMC that are unique and extraordinary related to the sale of the home and have not been otherwise compensated for with HOA dues. All invoiced items must be reasonable in cost, not include charges for services otherwise provided by other third parties (such as Title Companies) and paid for by the home seller; and the practice of "invoice stacking" (charging for unnecessary services) is prohibited. Home sellers have the right to protest Transfer Fees by paying such fees at home closing but having the funds held in abeyance pending litigation in Small Claims Court. This recommendation for consumer protection will not impose any financial burden on any business and simply represents implementation of generally accepted/expected business practices in Colorado.