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**Case Study: Do HOA Home Sale Transfer Fees Lower
HOA costs**

**The real total cost of Property Manager Services to the
HOA**

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Case Study: Do HOA Home Sale Transfer Fees Lower HOA Costs? The real total cost of Property Manager Services to the HOA

Background:

HOAs are comprised of home owners. All home owners equally share in the costs of the community. No home owner should be singled out to carry a heavier financial burden than another unless the basis for such is spelled out in the governing documents or HOA dues assessment policy.

HOA dues are used to pay for community services. HOAs hire property management (PM) companies to complete operation and maintenance services. These can include snow removal, lawn service, landscaping, road repairs, cleaning swimming pools, billing and collections for HOA dues, covenant enforcement etc. HOA dues are used to pay the property management company. PMs submit bids to HOAs to provide these services. A PMC contract with the HOA provides specifics on procured services and fees schedules.

On occasion, a PM may incur expenses that are extraordinary and specifically related to certain events not covered by their compensation in the HOA contract. This can warrant a special billing.

When a PM bids for contract work with the HOA, it should state all services to be provided, fee schedules and the cost to HOA to perform. The contract specific work is for a period of time such a year. The PM is legally obligated to complete their obligations based on the contract award. HOAs should review bids to ensure they are realistic, specific in service expectations, past performance, etc.

HOA home sales Transfer Fees are determined and retained by PMs NOT HOAs. Transfer Fees are charged to a home seller upon the sale of a home and must be included in the PMC's contract with the HOA. State and Federal laws restrict the ability of a PMC to charge Transfer Fees. The fee is only to be charged to recover PM unreimbursed expenses incurred due to the sale of a home that are not otherwise paid for with HOA dues (through the contract with the HOA). State law only allows for home sale transfer fees to reimburse the PM for unique expenses related to a home sale, SB 11-234. Federal laws provide guidelines that indicate most FHA/HUD loans don't allow for Transfer Fees.

Colorado State law that licenses PMCs (Community Association Manager Licensing) requires all CAM fees to be full disclosed in PMC contracts with the HOA and billings to home owners. The Department of Regulatory Agencies (DORA) that manages licensing has allowed full and open disclosure of the Transfer Fee to be met by a simple one-liner in a PMC contract and on home sale closing documents. Thus there is no ability for an HOA or home seller to understand why the fee is charged, what services were completed to earn the fee, if charges are reasonable (as required under State

law), if the charges are in compliance with State and Federal laws, and/or if the Transfer Fee charges are duplicative of services already paid for with HOA dues.

The purpose and justification of the home sale Transfer are never explained in a PMS contract with the HOA or to the home owner with an invoice.

Some HOAs and home owners have been led to believe that if the Transfer Fee is not charged to generate income to the PM overall costs to the HOA will increase. Overall costs to an HOA equal all compensation paid to the PMC by home owners. Transfer Fees are charged to home owners and must be included in the total costs. If a PM is counting on Transfer Fee income to complete their contract and such income is at best a “guesstimate” then the PM may not be able to fulfill their contract obligations. Any linkage of Transfer Fees to successful completion of the contract should be disclosed to the HOA Board and home owners.

Any PMC bid for HOA contract award contract that uses Transfer Fees to underbid in anticipation of income and such scheme is not revealed is an unfair, deceptive and dishonest business and cause to terminate the contract by the HOA. Underbidding to win contracts places small business at a disadvantage as they simply don't have the capital reserves to fund anticipated income (that may not materialize). Thus the HOA (its' home owners) save not one nickel with this Transfer Fee scheme as the total cost to HOA home owners is the same. It is a reckless practice.

PMC contracts with HOAs should be based on costs to complete services plus a reasonable profit margin.

The total PMC cost to the HOA (home owners) is the contract award amount. Any separate and unique PMC fees assessed to home owners for services not included in the PMC and benefit only the home seller can be separated from the HOA costs paid for with HOA dues. The PMC should be compensated for all expenses incurred either through the PMC contract with the HOA and, as justified, through direct invoicing to the home owner. If Transfer Fees are used by a PMC to recover expenses defined in the baseline contract with the HOA, then the real PMC cost to the HOA is the total of both.

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 and reckless. The total compensation to a PMC for services rendered under the contract with the HOA is stated within the contract. If a PMC assesses home sale Transfer Fees this raises the total cost to the HOA for PMC services. One can't separate the Transfer Fee assessment from the total cost of PMC services to the HOA. Thus, PMC Transfer Fees benefit only the PMC and not the HOA and raises the total cost to home owners. A Board that awards a contract must not give

license to a PMC to assess fees to home sellers or others in the community to make up for low bidding or to enhance income.

Home Sale Transfer Fees not included in HOA Governing Documents

The authority to bill and collect HOA dues is in HOA governing documents and no such statement or explanation is present for assessing home sale Transfer Fees. This alone makes the legality of charging Transfer Fees questionable. HOA governing documents most likely discuss the ability of a Board to make special assessments, apply fines for covenant violations, and expend funds for community maintenance and activities. HOA contracts with a PMC should not extend authority to the PMC to assess fees on home owners (except as documented in the HOA contract).

HOA contracts with a management company are unknown to the home buyer/seller and are mostly not challenged and/or understood by HOA Boards. Transfer Fees are assessed because they can be and not because they are justified or fully explained in the HOA contract with the PMC.

The Colorado State Department of Regulatory Agencies (DORA) has decided that full disclosure on describing Transfer Fees can be limited to a one-liner in a PMC contract or on a home closing statement. This woefully meets the definition of full disclosure. DORA has enabled mostly NO disclosure. DORA has not required that home sellers be provided an invoice for Transfer Fees prior to payment. No justification and explanation of Transfer Fees to the HOA or home seller allows for no limit on what the PMC can charge (in Colorado this can range from \$50 to over \$1,000).

Underbidding HOA Contracts in Anticipation of Transfer Fee Income is Reckless and Deceptive

A standard business practice would involve PMs (or any company) to bid on HOA work in an amount that covers costs plus their expected profit margin. This assures that upon winning a bid the PM can perform and earn a profit.

Deliberately underbidding a contract in anticipation of other income is a deceptive and reckless business practice. Underbidding places the HOA in unknown jeopardy in the event that anticipated income doesn't come through and services at the end of a contract may not be completed or completed haphazardly due to lack of capital.

Underbidding using Transfer Fees to fund the amount of under-bid has been presented to HOA Boards as a cost containment and/or cost saving business tool that suppresses the need to increase HOA dues. This concept is only acceptable if the HOA wants to penalize home sellers with Transfer Fees to fund the under-bid. The other problem is that if the anticipated income doesn't come through and the PMC can't deliver services the Board will have to make a special assessment to ensure services are continued. No Board is exercising its' fiduciary responsibilities if it gets involved in schemes in awarding contracts that leave the HOA operation and maintenance responsibilities to be

dependent upon uncertain and anticipated events vs awarding contracts on what is very specific and feasible and that which leads to proper financial management of the community.

Underbidding is an unfair and reckless business practice that places **small businesses** in a great disadvantage. Large PMs that are well funded and have ample cash reserves can underbid in the amount of anticipated and erratic transfer fee income. This is not the case with small businesses that have tight operational margins. In the event the anticipated income doesn't come through, a large PM may go into an operating mode of less than optimal performance leaving the HOA in jeopardy.

Justifying the HOA Home Sale Transfer Fee

The fee by law can only be charged for unreimbursed expenses incurred by a PM due to the sale of a home. This means that services already paid for in a PM's contract with the HOA that are routine shall not be part of (paid for again) the Transfer Fee.

Examples of expenses that don't qualify for billing to the home seller with Transfer Fees: changing administrative records and bank accounts, and issuance of a Statue Letter which is no more than a final billing, name changes to HOA records related to a death, marriage, children moving in or out of the house, birth of a child, issuing and canceling security devices, etc. Billing for these with a Transfer Fee represents duplicate billing.

The only way a consumer understands that for which they are billed is through a detailed invoice. All businesses in Colorado practice full disclosure with invoices to request demand for payment.

PMs have opposed providing home owners with an invoice detailing services provided to earn the fee. An invoice would identify those expenses incurred by the PM that are unique and only resulting from the sale of a home. In public legislative hearings, PMs have stated that they can't readily identify these unique and material expenses (if they are unique they should be easier to identify) but can specifically bill the home seller an exact amount. Additionally, and absurdly, they have claimed providing an invoice to home owners is simply too costly: no other business in Colorado can demand payment without an explanation let alone an invoice except PMs. Invoices to the home seller would meet the requirement in the licensing law that demands full and open and honest disclosure to justify the fee. An invoice would surface any duplicate billing for services already paid for with HOA dues and if the fee is in compliance with State and Federal laws.

State Law Addresses Transfer Fees: SB 11-234

The below statement in SB 11-234 and also posted on the Community Association Institutes (CAI), the trade group representing PM and HOA lawyer interests, related web site. This clearly explains when and why Transfer Fees can be charged. To be in compliance with the law, such expenses must be related to the sale of a home. Only an

invoice can support the fee being in accordance with the law. The reason no invoice is provided is because no such unique home sale expenses can be identified to justify the fee.

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.

Several issues thus arise with SB 11-234: 1) using transfer fees to underbid is illegal 2) services in conjunction with the sale of a home can be charged to the home seller if such services are unique and only occur when a home is sold.

Why do some HOAs charge no fee or less than \$50 and others \$350 – 1,000?

Many HOAs charge between zero and \$50 for a home sale Transfer Fee, others charge \$600-1,000. Those at the lower end are as well run as those at the high end. These HOAs simply get bids on operation and maintenance services, select the best value, and trust the bid covers the PMC's cost plus profit. No schemes or extorting home sellers for fees and it works. The Boards of these HOA understand that bids that are materially under others are questionable and in the end don't save the HOA anything and put the HOA in risk.

HOA Board Fiduciary Responsibilities:

HOAs with Boards that understand contracting and scrutinize the particulars of contract bids will demand that any mention of Transfer Fees be justified, in accordance with the law, and question the use of Transfer Fees. Boards should ask PMC representatives the impact of not allowing Transfer Fees except for specific services performed that are unique to the sale of a home and not already paid for with HOA dues. Boards should require that Transfer Fees be fully explained in writing in the PMC contract and on invoices to home sellers.

Transfer Fees Also Charged by sub-associations and to Title Companies

The real/total cost to home owners is not complete unless sub-association transfer fees and Title Company Transfer Fees are included. If you live in an HOA that has a "parent" association you can be assessed a Transfer Fee from both the parent and your own PMC thus doubling the cost to the home seller: income opportunity for the PMC on steroids. Think about this, what are the distinct tasks that both the parent and sub complete related to the sale of a home that warrants both charging? The linkage to the parent association is set up in the HOA's governing documents and mostly unknown to the home seller until they sell their home.

The other unknown and costly Transfer Fee paid for by the home seller is the Title Company Transfer Fee. This fee appears on home closing documents as an

Administrative Fee. The fee is charged by the PMC to the Title Company to provide them with a copy of the home owner's final billing and a copy of the HOA by-laws. This is the same final billing already paid for with HOA dues and then again with the questionable Transfer Fee. This is triplicate billing. Add in a sub-association fee and we have quadruplicate billing. The HOA by-laws can be obtained by the home seller, Realtor, or Title company for free from the HOAs web site or for very low cost to place it on a CD or send it via email.

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.

Recommendation to End HOA Home Sale Transfer Fee Abuse:

A simple change to existing HOA law requiring all Transfer Fees be documented in the PMC contract with the HOA and on invoices to the home owner to include: a statement that all charges to home sellers will not include charges for services provided to home owners and paid for with the PMC's contract with the HOA; only include expenses incurred by the PMC that as a result of the home sale; confirmation that all charges to the home seller for Transfer Fees are in compliance with State and Federal laws; that all

Transfer Fees will be documented in detail by type of work performed and line item costs; and a statement defining the process to protest that which a home seller considers an excessive fee and that the PMC will provide the home owner with an invoice 3 days prior to home closing.

DORA issue improved CAM licensing rules on fees disclosures in PMC contracts with the HOA and on Transfer Fee invoices to home sellers. The disclosure requirements are in the previous paragraph.

Summary of Findings:

There is no evidence HOA home sale Transfer Fees reduce PMC costs to the HOA. Any practice that singles out home sellers or other home owners for generation of income in support of a low bid PMC contract is a poor and deceptive business practice, places the HOA in jeopardy, is harmful to small businesses that can't operate on the concept of developing contract bids based on irregular and anticipated income, and is a practice that if known to the HOA Board breaches the principle of acting in a fiduciary manner. Any Transfer Fee charges must be justified, legal, supported by documentation, and not represent duplicate billing of services already paid for with HOA dues.

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