

Triplicate Billing Tolerated With HOA Transfer Fees

Not that one needs another reason to dislike Homeowner's Associations (HOAs), but try this one: paying for the same services three times. The abusive and illegal practice of charging HOA Transfer Fees on the sale of a home in an HOA is well known to our legislators, the press, Title Companies, Realtors, property managers, and home owners. Except for home owners all others ("tacit enablers") turn a blind eye to this deceptive practice that costs home owners upwards of \$10 million a year in Colorado. Here's how it works, why it is illegal and why legislative action is required:

a) HOA home owners pay monthly dues. The dues cover such community expenses as snow removal, landscaping, and expenses for maintenance of common areas. They also pay for administrative costs such as updating the HOA home owner's directory, billings and collections, covenant enforcement, routine legal costs, maintaining a web site, posting HOA governing documents on the web site, administrative staff, and other operational costs. In most cases the money is well spent contributing to the aesthetics and positive property values. These tasks are normally completed by a property management company (PM), paid with HOA dues.

b) When an HOA home is sold a PM Transfer Fee is charged to the seller (or buyer). The fee doesn't benefit the HOA but is pocketed by the PM. The fee amount is determined by the PM without any justification required or need to provide a receipt to the payee, it ranges from \$0 to over \$1,000, has little if any relation to "claimed" work performed, and if not paid the home can't be sold. The "claimed" justification for the fee is that the sale of the home resulted in extraordinary and uncompensated expenses for the PM. The "claimed" expenses specifically relate to updating administrative and financial records, providing a copy of the HOA governing documents to the buyer, and issuing a Status Letter to the buyer indicating the financial status of the home seller with the HOA on the date of sale (are HOA dues current, any owed special assessments or fines, or other obligations). Average Transfer Fee in Colorado: \$350. Here's the problem and why the Transfer Fee justification for PM cost recovery results in a duplicate (read on further as it can be triplicate) billing:

1. Updating administrative records and other office tasks upon the sale of a home doesn't result in additional expenses to the PM. Think in terms of divorce, marriage, death, someone moving in or out, changing a bank account for payments, change of contact information, etc. There is no separate charge to the home owner in these events because such work is baseline and already paid for in HOA dues. A home sale is not unique or extraordinary in this respect thus all work related to who owns and lives in the home is already paid for with HOA dues. A Transfer Fee can be justified on this argument. Such charges are thus duplicative and a deceptive business practice.

2. The Status Letter in any other business is referred to as a final billing. This is no different than what one receives when terminating their TV cable service, utilities, or health club membership: it's called the final bill. Producing the Status Letter is a routine task, has all the detail and is official and is already paid for with HOA dues. There is no legal requirement to fulfill the Status Letter other than producing a final billing. If the final bill is valid, accurate, and official throughout the year why is it not upon the sale of the home?

3. Does providing HOA governing documents to the buyer justify a Transfer Fee? These are mostly available free of charge on the HOA web sites. The PM doesn't maintain these legal documents nor are they changed upon the sale of a home. The cost to provide these to a home buyer or Title Company via email or compact disc is no cost to nearly unmeasurable and considered routine services paid for via HOA dues.

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4) When a home is sold in an HOA the Title Company is required to provide the buyer with a Status Letter and a copy of the HOA governing documents. The PM often charges the Title Company for this service that passes the charges onto the buyer/seller (labeled a Document Processing Fee on Closing documents: average \$175). If this charge sounds familiar it is because this task was already paid for with HOA dues, then again with the Transfer Fee. The other term for it is “triplicate billing”.

5) To add insult to injury: HOA Transfer Fees in Colorado can only be legally charged by a PM if such charges represent unique and unreimbursed costs incurred by the PM in relation to the sale of a home: SB 11-234. The HOA Transfer Fee fails this test. If the home involves an FHA-HUD loan, HOA Transfer Fees not benefiting the HOA (retained by the HOA) are not legal.

Thus the abusive, deceptive, and often illegal practice of the HOA Transfer Fee and duplicate (and triplicate) billing continues with Colorado HOA home owners picking up the tab of upwards of \$10 million a year. The fee continues “because it can” and as a result of the Real Estate industry and legislators turning a blind eye to attempts to legislatively limit or end this practice. The other major obstacle to reining in this abuse through legislative reform is the Community Association Institute (CAI) that represents the PM industry and HOA legal interests. Unfortunately and too often this group is represented and accepted in the legislature and in the media as representing HOA home owner’s interests making awareness on the facts on this abusive practice difficult.