

State HOA Data Repository can save HOA home owners/buyers Millions at Home Closing plus more benefits

Spend a little, save a lot, and we mean a lot as in millions of dollars for HOA home owners yearly. HOA home owners are burdened with excessive and abusive fees when they sell their home (unlike those in non-HOA developments). The HOA related fees can add conservatively **\$400-600 in home closing costs** to above \$1,000: real money, your money.

HOA home owners through their monthly dues (assessments) ensure HOA documentation, records, and homeowner account statements are secured, legal, accurate and up-to-date and available for access to homeowners and authorized parties. HOA documents/data are required and used by Realtors, home buyers, Title companies and others to comply with real estate home closing mandates. State HOA law indicates that access to HOA documentation is to be at no cost, except for printing, copying, downloading files) to authorized users as this service has **already been paid for by homeowners through assessments.**

Here's the problem. **When selling a home in an HOA almost all home owners are charged to provide HOA documentation to the home seller, Realtor, home buyer, Title company and themselves (this is the HOA home sale transfer fee charge).** The required information (documentation) to be provided the home buyer is listed in the DORA Contract to Buy and Sell Real Estate form: mainly HOA governing documents and a copy of the home sellers current account statement (financial obligations and outstanding violations) also referred to as a (Status Letter). Fulfilling this requirement, in nearly every home closing, is a routine, non-labor intensive and computer based, button pushing process. No new expenses, except for mailing, delivery and copying, are incurred by the HOA or its management company. Documentation services have already been funded with HOA assessments. Any extraordinary or unique charges incurred by the HOA or its management company that are required to provide the documentation and have not been paid through HOA assessments can be separately billed to the home seller and should be explained through a detailed invoice (which they are not). **There is no certifications, legal review or other legal requirement to be fulfilled in providing this information regardless of who provides the documentation to the requestor.** Note, homeowners (in this case the home seller) through a simple

email to their HOA Board can authorize others to gain access to records or get copies of HOA records and account statements. Most access and meeting DORA requirements can, therefore, be completed through on-line access to the HOAs data base by the home seller or Realtor without the need to involve the HOA or its management company. Thus, regardless of who delivers the information to the home seller or buyer it is the same “official” and current information. Charging the home seller a Transfer and Documentation fee automatically and simply because they are moving with no justification of services actually performed to earn the fee is against Colorado HOA law and a deceptive business practice that places the home seller under the impression there is something special, complex and arduous when a management company completes the task vs the home seller. It also implies that the home seller has no option to obtain the information themselves. Furthermore, with Realtors, home closing personnel and Title companies not questioning the validity of the charge the home seller is told to simply pay it. Even if the home seller attempted to protest the undocumented/no invoice charge there is no venue for this type of dispute with the HOA that is affordable and can be resolved quickly, none. In summary, the Transfer represents a double billing to the home seller for service already paid for through HOA assessments.

The argument for **justifying the Transfer Fee due to required legal intervention** to make such documentation official and meeting legal requirements for home closing is highly questionable and not supported legally. Regardless of who provides this documentation to the home seller, management company or home seller, it is the same documentation and if not then the management company is not fulfilling their responsibility to maintain a current and accurate database. There should never be an official database for one purpose and another one that is out of date and possibly inaccurate. So all requests do use the same database. There might be very extraordinary work and costs for a very, very low percentage of home sales related to providing this documentation but in that rare instance such charges should be approved by the home seller/HOA, separately billed to the home seller and accompanied by a detailed invoice showing the extraordinary and unique charges (this doesn't happen). Thus, this process of providing documentation is mostly a computer- based data request and query application requiring little work on part of the HOA or its' management company. The

obligation of the HOA is to satisfy DORA requirements and this is paid for and completed through HOA assessments. Thus, **any services, charges or legal costs and certifications not required to fulfill DORA home closing mandates** should be identified as such and billed and invoiced directly to the home seller and recognized as not being previously paid for with HOA assessments.

The Transfer Fee paid by the home seller has nothing to do with membership in a country club, filing papers with State Agencies or paying for any process in the home closing.

Next, on any other day of the year except when selling one's home, the request for documentation and Status letter is free unless there are extraordinary charges agreed to for special processing. Thus, how is this fee justified only during the home closing process: it isn't.

Then there is the argument of ensuring accuracy and current HOA records in the HOA database for users that can only be guaranteed with a pay to access fee (else they may be inaccurate). What a sad and corrupt information dissemination practice. Do homeowners looking up their Xcel Energy Bill, cell phone, credit card, water or utility account have to pay for access or a surcharge to guarantee the information is valid and current. The answer is NO! The custodian of HOA information (the management company) is paid to keep HOA records current and ensure all queries, inquiries and production of documents to requestors are current and correct as of the day fulfilled. So a pay-to-play process for access to valid information has no place in fulfilling home sale documentation requirements.

Making this charge to home sellers for DORA documentation requirements gets worse. The Documentation and Account Status fee (referred to as the HOA Home Sale Transfer Fee) is presented to home sellers with no documentation or justification. No invoice with details of the charges. It is pay or your home sale can be suspended. The fee shows up on the closing documents with a three-word explanation: HOA Transfer Fee. Thus there is no evidence of the management company earning the fee, it is simply automatically assessed. The HOA's contract with the HOA may list or indicate a Transfer Fee will be imposed and even list services that are completed to earn the fee. However, placing this in a contract doesn't justify billing a home seller for work they already paid for. If such a

contract prohibited not servicing any homeowner that was Black or Hispanic it would not make it an acceptable or legal practice. Contracts should indicate that only extraordinary and unique expenses incurred by the management company related to the sale of a home or any other charges required by DORA in to meet documentation requirements be allowed in a Transfer Fee. Such charges would have to approved through the HOA Board. So, homeowners should not be fooled by any of duties and tasks the management company lists in the contract pertaining to the Home Sales Transfer Fee as they are either already paid for via assessments or not required to be completed but added-on and never documented as completed.

Did you know the Transfer Fee to produce the documentation is charged regardless of whether the homeowner completes this documentation task, it is completed by a third party or if the management company produces the documents?

An informed homeowner is a good consumer. As a homeowner one is not aware that there are private companies that can also provide the documentation for a fraction of the cost and savings of hundreds of dollars. That homeowners can be charged a Transfer Fee when in fact nothing beyond services they already paid for are provided and that even when they complete the documentation requirements themselves they will be charged a Transfer Fee. Also, if one wants to protest the fee as duplicate billing or unreasonable there is no venue for that to take place: it just shut up and pay it your home purchase will be in jeopardy. Consumer rights are thus absent with the Transfer Fee and no folks in a position of power want to hear about it or support a Bill to change this practice.

Duplicate billing is illegal, period. More to be said

Welcome to the world of HOA Home Sale Transfer Fees that are the poster child for this abusive practice. Duplicate billing involves charging a consumer twice for the same services. Charging a homeowner a Transfer Fee when they already paid for documentation services is duplicate billing. Triplicate billing would be charging the consumer twice for something they already paid for. Title companies are charged in a normal range of \$125 to obtain home closing HOA documentation that is the same as that already paid for by the home seller through assessments and a Transfer Fee. Note, any charge to the Title company

will be paid by the home seller. The Title company charge is automatic and accepting the homeowner's copy of the documentation is not an acceptable and traditional practice that costs home sellers.

To make matters worse, the HOA doesn't determine the amount of the Transfer Fee nor retain this fee: this is income to the management company. If one doesn't pay the fee the home sale is held to ransom. Asking for an explanation of why the fee is charged (because it can be), being provided an invoice justifying the fee is rarely if ever completed and protesting the fee is not an option as there is no out of court, affordable venue for dispute resolution. No other business charges to exit their system/service or charges for a final itemized invoice or other detailed documentation but in the world of HOAs this is common practice.

Management companies marking-up the costs actually incurred in providing home closing documentation. More insight to this corrupt practice. Some, if not most, management companies are custodians of HOA documentation. Decisions on how documentation is managed including access to such information is not at their discretion but authorized by the HOA Board. HOA Boards and management companies can violate State laws indicating there should be no charge to any homeowner to acquire this information. In the absence of a dispute resolution venue being available to homeowners this law is ignored. Same with consumer protection laws that enforce violations concerning duplicate billing, homeowners find no help from this source. Now what homeowners and others don't know about the Transfer Fee. If fulfilling documentation requirements is so intricate and costly, why do management companies use an outside company to complete the release and delivery of DORA documentation for them for a charge of around \$80 – 100 and then charge the home seller \$300-600 or more for the service. If such release of information is independently completed by a third party for the management company it exemplifies that no verification and validation of the data is required by a legal person and that the accuracy of the documentation when completed by a third party is just as valid as if a homeowner accessed the database to get the information. Also, the argument that the management company is protecting personal information is broken when they somehow grant the third-party access to the homeowner's personal account. So justifying the home sales transfer fee based on the argument that only the management

company can provide such a service is totally bogus but home owners and lawmakers seem to consume this tall tale.

Cost to HOA homeowners: This duplicate/ triplicate billing practice and using third parties to provide documentation in the sale of one's home costs HOA homeowners at least \$10-12 million a year.

Defending the Transfer Fee

Solutions

There is a no cost to taxpayers, easy to implement solution that can be implemented by DORA through its HOA Office. Legislation and legislator support to address this abusive practice is a difficult road with HOAs taking a backseat to other "legislative business". Use the HOA registration process to require HOAs to upload the HOAs governing document and all documentation (except homeowner account statements) to a State-wide HOA data base. This costs HOAs next to nothing. Funding would be through the HOA registration process and be less than \$20-25 per HOA in the initial year for start-up costs and no more than \$10-15 per HOA per year thereafter (less than twenty-five cents per home per year). Savings in the millions to HOA home sellers. The process to gain access to homeowner account statements (Status Letter) is already in place and by law no cost to the home seller. This effort should be under the management of the HOA Office and not commingled with other DORA responsibilities or using DORA computer equipment and processes. The cost of implementation, hardware and software and telecommunications would be less than \$45,000, hire one employee to serve as the system manager (this is not a high-tech job) \$60,000 per annum plus additional overhead as applicable \$15,000 a year or on the high end \$120,000. This is a simple system to design, develop and implement with technology needs readily available and compatible for use in deploying a State-wide data base. Thus a first-year surcharge of \$25 would raise over \$200,000 and most likely be less. After implementation the staff position would become full time between managing the data base and other duties as assigned. A \$15 dollar a year HOA registration increase would raise about \$130,000 so this fee will most likely be

reduced. A solution that requires no general taxpayer funding, does not impact homeowner assessments, saves homeowners millions per year and accommodates the needs of not just HOA home sellers but is finally the beginning of a state data repository meeting the needs of Realtors, homeowners and buyers and State and other governmental agencies completing research on the fastest growing segment of the housing market (HOAs). Note the HOA registration process allows DORA to determine registration requirements so this can be done without legislation and be completed now.

Another cost saving solution that is less effective for all homeowners in Colorado's 9,000 HOAs: require HOAs to apprise and offer home sellers the option to complete DORA documentation requirements on their own or through third parties and that doing so meets and their documentation disclosure requirements. Also, on DORA's Contract to Buy and Sell Real Estate a note is provided about this option and require Realtors to confirm they apprised the home seller of this cost saving item.

Implementing the State-wide data base, however, ensures all 9,000 HOAs are in compliance with making official documentation available and at no cost to the user.

As part of the State's Sunset Review of the State's HOA Office to determine its continuation and improvements this catch 22 of HOA fees can be corrected. When HOAs register with the State they must be required to download all official governance documents required by the State for home closing. The process would take a management company that oversees the documents no more than a one-time effort of one hour. To set up the data repository at the State would require no more than a one-time assessment to HOA upon registration of \$25 then \$5-10 dollars thereafter. The data would be available to all with a need to know and fulfill documentation requirements for home closing, Title company needs, home buyers to research, and others with no time delays or costs for special processing. Those home owners preferring this data acquisition task be completed by other than themselves could use available service providers for a fee not to exceed \$50 (the service available now). No hoops to jump through, no writing letters to request information, no data security issues and privacy act data involved. Very simple, low cost and best of all savings to home owners of well

over \$10 million a year. Final account status billings of the seller with the HOA should also be mandated to involve a simple request at only the cost to produce the billing which should be nominal.

If the HOA Office is to continue it must be shown to serve the needs of the home owner. This process alone would justify continuance. Will it be HOA reform or will the HOA Office continue to be an administrative entity that provides few services to the public and does nothing about the main issue for homeowners in ensuring their rights under State law or an HOA's governing document.

. This is the three-card monte of HOA fees with the management companies dealing the cards and the home owners the victim. HOA Home Sales Transfer Fees are an income enhancement scheme funded by the bank accounts of HOA homeowners.