

HOAs can give away/sell their community property and assets

Article by the Colorado HOA Forum

States have turned over the operation and maintenance of highways to private companies in return for income from tolls. This transfer of responsibility is often prompted by cost savings motives. HOAs have also done the same by transferring their community property and assets to a Metro District or local government entity. Also transferred is the entitlement to homeowner monthly assessments (aka monthly dues) and related billing and collection responsibilities. Assessments previously paid to the HOA can become part of a homeowner's property tax billing.

In general, the HOA's governing documents will describe the process, limits or restrictions on transferring or selling the HOAs community/common property or other assets. Generally, a Board can't independently sell or transfer ownership of HOA assets. Rather, a vote of homeowners in which ALL agree on the transfer or sale and the distribution of any proceeds received by the HOA. Also, it is common to also require the approval of ALL first mortgage holders (financial institutions that have provided the home loan to the property owner).

Why do you have to get the mortgage company's approval? They have an interest in the property that secures the owners debt. Anything that would diminish the value of that property without their consent is prohibited. Removing HOA assets from community control would obviously change the original intended use and purpose and appeal of the community. Thus in nearly all such transactions you will need the approval of ALL first mortgage holders.

This process can be deemed next to impossible as to get unanimous approval of homeowners and first mortgage holders is beyond difficult. However, it happens and is mostly prompted by cost savings and/or an HOA no longer wanting the oversight and management responsibilities of the common property. The right to collect HOA monthly assessments, in full or part, will also belong to the new owner. If the HOA has responsibilities related to individual homes such as painting homes, replacing and maintaining roofs, driveway cement repair, tree trimming, etc. this can complicate the financial issue in the transaction. It must then be determined how much of the monthly assessment is allocated to the new owners of community property and how much is retained by the HOA? Will the HOA rewrite its Declaration to assign all maintenance of individual homes to the homeowner and if so the impact on assessments? Another issue to be addressed is the need (continuation) for an outside HOA property management company. Their primary responsibilities for are generally related billings and collections,

snow removal, landscaping and contracting services? If the HOA continues responsibility for mowing home lawns, painting homes, etc. they will continue to use a management company. If not then this contract service could end.

The transfer of HOA assets to another entity is a long, complicated and costly process. Lawyers will be required, many community meetings and votes, the HOA Declaration changed. The transfer will change the appeal of the neighborhood for the better or to the detriment, the impact on home values must be questioned and issues related to the use and maintenance of such property will be under the control of an outside entity complicating problem resolution. Depending on the conditions and restrictions imposed on the recipient of assets, it is possible that a swimming pool could be closed or that usage fees on the swimming pool usage, clubhouse use restricted, tennis court usage a pay to play entity, etc. If you are in a senior community the use and restrictions imposed for the benefit and compatibility of senior living enjoyment (hours when children can use the pool for example) might change. With the HOA no longer having a dependable (or any) income source from HOA assessments it could begin to rely on aggressive fines and fees policies to fund overhead costs for covenant enforcement. If the HOA has reserve funds which will no longer be needed to maintain community assets how will these funds be used? Many other issues are involved.

In summary, an HOA can sell or transfer its community assets/property as authorized in the HOA governing documents. This is a community initiative requiring professional involvement from the legal community and plenty of homeowner communication from the HOA Board. If this is being completed as a cost saving initiative first consider options such as raising assessments or a special assessment to fund maintenance and repair (in many cases this is long overdue). Before giving up those community assets that were the appeal of the neighborhood seek out professional advice.