

[HB21-1229](#)

[Home Owners' Associations Governance Funding Record Keeping and HOA Fees](#)

Comments by the Colorado HOA Forum

The intention and impact of HB 21-1229 (concerns record retention and access and transfer fees): This Bill attempts to reinforce the responsibilities of HOAs in current State HOA law concerning which records are to be retained and the right of homeowners to access such records. In addition, it addresses fees charged by the Association:

(h.5) A LIST OF THE CURRENT AMOUNTS OF ALL UNIQUE AND EXTRAORDINARY FEES, ASSESSMENTS, AND EXPENSES THAT ARE CHARGEABLE BY THE ASSOCIATION IN CONNECTION WITH THE PURCHASE OR SALE OF A UNIT AND ARE NOT PAID FOR THROUGH ASSESSMENTS, INCLUDING TRANSFER FEES, RECORD CHANGE FEES, AND THE CHARGE FOR A STATUS LETTER OR STATEMENT OF ASSESSMENTS DUE;

1. Without an out of court dispute resolution process for homeowners, how will this law be enforced? It will be very difficult.
2. Who will enforce the fines referred to in this Bill? Since the HOA Office doesn't have enforcement authority how will the fine be enforced? How will homeowners file a complaint with the HOA, if they are somehow involved in fining an HOA, when the HOA doesn't have investigative authority with complaints?
3. We asked that some penalty to the HOA be considered vs a monetary fines as such fines penalize homeowners who end up paying the fee. For example, as with issues concerning HOA registration, the penalty is precluding an HOAs rights concerning liens.
4. The real issue with homeowner access to HOA documentation is with the management company that normally stores such documents and acts on records requests from homeowners: without licensing of property managers such accountability for compliance with the law (HB 21-1229) becomes very difficult. Fine the management company not the HOA.
5. Transfer fees are charged to the buyer by the management company not the HOA: the management company sets the rate, retains the fee, bills the home seller and the fee has no financial impact on the HOA. HB 21-1229 indicates the fee is valid for extraordinary and unique costs incurred by the management company upon the sale of a home: 98% of the time there are no such costs. Even when such fees are documented in the management company's contract with the HOA it doesn't make such statements legal. If duplicate billing is the result this is illegal. If such a contract indicated the management company would not serve a category of residents that would be illegal but in the contract and not enforceable. Also, a statement in the contract doesn't guarantee the services listed will be performed to receive a fee thus it is important to issue the payee/home seller a detailed invoices of services completed to earn the fee.

The missing component is providing the homeowner an invoice of what was done, when and line-item cost as does every other business provide when billing a customer. The invoice also documents the activity in case there is a challenge or irregularity that questions if the work was done and such problem is "time" based. The property management industry has that HOA Boards will be "told" there are extraordinary and unique costs and never be challenged. The management companies can also indicate they complete tasks "not required"

upon the home sale to “pad” a fee and HOA Boards will never challenge. All that is required is the HOA documentation the maintenance and ownership has already been paid for via HOA dues and a final copy of the home seller’s account status (like all businesses do at no cost and a homeowner can obtain all through the year at no cost except when selling their home). Changes to directories, setting up an account for the new homeowner, issuing a card key, etc are never separating billed for as they are paid for via HOA dues. Thus, an invoice was surface excessive and unnecessary and duplicate billing via the transfer fee.

Thus, HB 21-1229 should be updated to: 1) require a detailed invoice to home sellers for HOA home sale transfer fees 2) management companies should be required to list those mandatory tasks required by law (copy of final bill and HOA documentation) and tasks they complete that have not already been paid for via their contract with the HOA and via HOA dues and 3) penalties for non-compliance of records release to home owners should be non-monetary.