

HOA Home Sales Transfer Fee (TF) Reform Suggested Content for a Legislative Proposal

Comments by: Colorado HOA Forum www.coloradohoaforum.com

It is understood that the below items/requirements may be consolidated to preclude redundancy but the content will not change.

HOA Home Sale Transfer Fees (TF) in this legislation refers to charges assessed a home owner to compensate an HOA property management company in their task of delivering HOA official documentation and a final home seller account statement to the home buyer or other entity. Under Colorado law (CCIOA) neither an HOA or it's PMC can charge a homeowner for their request of such documents except to cover shipping, handling and special mailing charges. The HOA documents required to be provided to the home buyer by the home seller are listed within the Real Estate form posted on the DORA website: "Contract to Buy and Sell Real Estate". The home seller's account statement, also referred to in Status Letter, is the other component of the TF and indicates a home sellers financial obligations, both current and approved future obligations, to the HOA, mandatory monthly assessments and related due date, any outstanding covenant violations and other information identified in this proposal. Charges to the home seller to obtain an account statement are also limited to shipping, handling and mailing costs. Any extraordinary and unique requests by the home seller to the PMC will be charged to the home seller and identified as such on the invoice the PMC or other entity completing TF tasks provides the homeowner.

TF billings to the home seller don't involve payment by a home seller or buyer related to club memberships, fees to a developer or Metro Districts, HOA usage fees or golfing related privileges.

HOA documents are owned, maintained and controlled by the HOA. The means to store, update and handle HOA documentation can be

assigned to a PMC under their contract with the HOA. HOA contracts with a PMC or other entity managing HOA documentation must include a statement indicating that the TF can only be assessed to a home seller for services that are extraordinary and unique to the home sale and not otherwise paid for through a contract with the HOA; fulfilling the release of records to any home owner or other authorized entities at any time will not result in any charges to the home seller bill or others except for shipping, handling and mailing costs as indicated in State HOA law (CCIOA); limit rush charges to \$25 plus shipping and mailing; mandate that any TF billing be accompanied by a detailed invoice of work performed including a description of each task, when completed and line item cost. The invoice will also include a statement that all such charges have not been previously paid for through the HOA but are the responsibility of the home seller or other authorized person; all records managed by the HOA will be maintained in only one form that ensures the maintained and released information can be considered official; all records will be able to be identified by a user as to date printed, downloaded or otherwise delivered; the PMC is authorized to deny records release requests only with the approval of the HOA Board; the records accessed through the HOA website are the same as those allowed to be accessed or downloaded by the home seller or authorized user; that the PMC must request approval from the HOA to allow any file access privileges to be granted to anyone or any business and state the reason for such access; and that all access to HOA documentation by authorized persons or entities be gained using a user ID and password. The records management requirements pertain to both PMCs and methods used by HOA self-managed organizations and with records storage and maintenance systems using computer-based technology or hardcopy/paper-based systems.

An unpaid TF invoice to the home owner represents a transaction between the PMC and homeowner and can't be collected through HOA debt collection authority. The unpaid TF invoice can't preclude the home sale transaction. A PMC can require payment from the home seller or other authorized entity prior to completing TF services. Such services will be completed within 5 days of the request. If a short delivery time is required the PMC can charge a rush fee \$25 plus the cost of shipping and mailing.

All PMC maintained and stored HOA documents will be current and correct and will be considered as such by all who utilize the documents in fulfilling real estate transaction requirements and others authorize to access such records. No special processing is required to update HOA records to meet real estate and home sales needs upon their release. However the PMC will make updates to homeowner accounts if they are aware of received and not posted HOA assessment or debt payments.

There is no estoppel requirement in State HOA law related to document release nor is there any requirement for certification of accuracy by the PMC legal staff or others. All documentation and a statement on the HOA's and PMC website will indicate the information provided is current and correct and reflects all known available information and that such documentation and account statements can be used to meet requirements in providing home buyers, Realtors and others HOA documentation.

The TF amount can include costs to complete loan approvals, government questionnaires, or special work requests that are not normally part of a home closing process. The allowable charge to a home seller to complete any questionnaire or application is \$25 but

extraordinary and unique work can be billed to the home seller to include the PMC's expenses.

TFs can include charges to the home seller for any mandatory home sale inspection to identify any unresolved covenant violations. Home inspections ordered by the home seller or buyer are not part of the TF. HOA covenant violation home inspections are limited in charges to \$100 and such work will be noted as complete on the TF account statement and the PMC or other entity performing the covenant violation home inspection will provide the HOA and PMC of its' findings and any outstanding violations at the time of providing the account statement will be noted on the statement.

TF payments are made to the PMC. The PMC will forward any funds from such payment that are the income of the HOA and not related to records release within 5 days of receipt of such funds.

TF charges are not required to be imposed by the HOA.

Regardless of what verbiage an HOA has in its contract with the PMC, requirements in CCIOA take priority.

HOAs will notify homeowners at least once a year of options and costs to use a private company to complete TF services and indicate TF services can be completed by a homeowner through the HOA website at no cost and considered official for real estate transaction needs. Homeowners will be explained what is included in the TF services in real estate transactions. The notification will also explain that any documentation required by a Title Company, financial institution or other entity related to home closing can be obtained through similar options explained by the HOA.

PMCs can't charge a Title Company more than \$25 plus handling, mailing and document transmission services to complete TF

requirements. The Title Company can't charge the home seller more than it paid to acquire the documentation

There will not be a default amount collected by an HOA PMC for providing documentation related to the TF. All TF and other home closing charges to the home seller by the PMC must be justified, documented and identified on a detailed invoice provided the home seller and have been paid for previously with HOA monthly assessments through the HOA's contract with the PMC.ill

HOA TF can't be used to fund HOA operational or maintenance costs

A homeowner can challenge the cost and validity of the TF in court but non-payment can't preclude home closing.

Charges to homeowners related to TF assessed to a home seller by a sub-association can't be duplicated by a Master Association. The Master Association can only charge the home seller a TF and such charges are limited to shipping and handling related to their release of records.

A Title company is also provided at no charge the documentation and home seller account of financial state at the same time the home seller is provided such information.

PMCs can't require a default or set amount be charged to a home owner in the sale of a home.

Require homeowners to be apprised of alternatives available to complete transfer fee services other than through the management company.

The non-payment of a TF can't result in an HOA expending funds to collect the fee. Collection of the TF is the responsibility of the PMC. The TF can be collected at the time of home closing.

All PMC and HOA costs incurred that are unique and extraordinary to the sale of a home will be paid for by the home seller and paid for prior to or at home closing at the discretion of the HOA.

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