

## HOA Transfer Fees

set the record straight on this scam with the below “dirty dozen”

Consider these facts as to the legitimacy of HOA Home Sale Transfer Fees:

- 1) HOA home sale transfer fees do not benefit the HOA, are not required by law, aren't mandated by HOAs (some do not allow this fee) and the amount of the fee is not determined by the HOA but by the property management company (PMC).
- 2) The transfer fee is only to be charged for unique, extraordinary, and material costs incurred by the HOA's PMC incurred due to the sale of a home. Most, if not all, of the contended services provided in regards to the sale of a home that are required are already paid for via HOA dues and the HOA's contract with the PMC. Colorado State law, SB 11-234, indicates this fee can only be charged by a PMC to recover unique and extraordinary costs incurred from the sale of home (which is not what it currently represents). The fee can also preclude approval of a HUD/FHA loan.
- 3) **Home sale closing procedures include explanations and documentation of legally required funding for taxes and escrow, home insurance, home appraisal, Title insurance, etc. and identification of existing liens and other encumbrances legally filed against the property by government and other entities. Unpaid private billings such as cable tv, utilities, and water are not part of the closing process.** Each of these has a product delivered/documented as evidence of services performed. Then there is the **HOA home sale transfer fee** that appears as a one liner on closing documents (average \$350) but there is no receipt or documentation of what the fee represents, who is charging it or receives it, what services have been completed to earn the fee, when completed, no itemized costs of services to justify the fee and worst no one in attendance actually understands what this assessment is all about (not the Realtor, home seller, or Title Insurance person or person supervising the home closing session). **The fee represents a transaction between the home owner and a private company, does not involve a lien or other encumbrance or carry forward debt on the property and thus has no place in a home closing but if not paid the home closing will not continue.** It is pay it or the sale can't go forward: is this a way to conduct business? Why is the home closing process serving as a collection agent for the PMC industry?
- 4) HOA contracts with the PMC are required by law, Colorado HB 14-1254, to include verbiage that
  - 1) **Explicitly discloses all fees in the managers contract with the HOA or in an addendum to the contract and**
  - 2) **documented on a clearly identified line item on a real estate closing settlement statement.**Here are the major problems with this legal requirement that is vague at best and avoid justifying the fee based on specifics:
  - a. There should be a requirement in that HOAs inform home owners of the fee. Currently they only become aware at time of closing with no explanation/documentation.
  - b. HOAs are nearly exclusively managed by PMCs. Boards default most decisions concerning contracting, financial management, and the operations of HOAs to the PMC. HOA Boards generally have no experience in contract management, managing an HOAs affairs, nor do most challenge anything the PMC demands/requests: oversight of the PMC is common and lacking. Thus, HOA PMCs easily convince Boards that the fee is standard and required to

- gain reimbursement for incurred, unique, material, and extraordinary costs related to the sale of a home.
- c. The "explicit clause" in the PMC contract with the HOA should clearly state (but does not) that the fee can only be charged for unique, material, and extraordinary work not paid for via HOA dues (to preclude duplicate billing); what work is required and completed to earn the fee and what work is charged to home seller that is optional and imposed on the home seller; what work is legally required; what work requires hiring a lawyer to complete upon the sale of a home and why and who requires it; state that the home owner will be apprised of the work completed to earn the fee via a hard copy/electronic detailed invoice providing line item cost for each unique service and how the products/services are to be delivered/evidenced as completed to the home seller/buyer. None of this adds to a PMCs operational costs.
  - d. "explicitly" is normally a one liner in a contract. The law should've stated specifically what is required (as stated above) to be explicit.
  - e. The "addendum of detailed charges (cost of each service)" can be met with a vague one liner stating that administrative tasks are performed to earn the fee. The amount of the fee should be stated and supported by pricing of each service. If a PMC can charge this fee it certainly should be able to state what each task costs.
  - f. The disclosure requirement on the real estate closing documents amounts to a one liner, no explanation and no receipt at time of closing (and when verbally explained the explanation is generally wrong). A detailed written receipt is critical to accountability and expected from every other business transaction in the State.
- 5) PMCs determine the amount of the fee, retain the fee, never provide home sellers with a receipt for payment indicating what services were performed by line item and when performed: no other business can demand payment without any proof of services performed. The fee charged can't be challenged by the home seller, the services performed can't be shopped for in the market place, and if not paid the home won't be sold. The fee ranges from \$100 to over a \$1,000 and there is no relationship between contended services performed and invoice amount. Some HOAs preclude PMCs from charging the fee as they have determined that all REQUIRED services are paid for with HOA dues and don't warrant any special fee for a home sale other than a minor administrative charge for preparation of a CD or electronic file for the buyer or Title Company. No increased costs will be incurred by the HOA with the elimination/limit in a amount of transfer fee to \$50 or less.
  - 6) A Title Company often charges home sellers for costs they are assessed from the PMC that involve replicating what they billed the home seller: why charge both? This often is listed on home closing documents as a Title Company "administrative" charge that includes PMC charges. Specifically, the Title Company is sent a CD or file containing governing documents and a copy of the home seller's final billing statement (aka Status Letter) all produced in minutes via a computer applications, is considered part of the PMCs standard operations and contract with the HOA with no extraordinary work or material cost incurred, no legal certification is required on these documents from the PMC, and such effort requires no research or confirmation if the PMC records are up to date, organized and accurate. Note, when a home owner applies for a home loan refinancing, car loan, etc. the PMC provides the home owner at no separate charge their latest billing statement (Status Letter) or forwards to the loan company for no or low cost (\$10 or less).

- 7) There is no legal requirement of a need to have any HOA governing documents or final billing to home owner (Status Letter) indicating their financial status with the HOA: this is padding the bill. The PMC records should always be assumed to be up-to-date, accurate, and reflect all financial information based on their contract responsibilities with the HOA. Thus, a certification adds nothing to the process.
- 8) PMC transfer fee billings should never include the following items as they are a) paid for with HOA dues b) such tasks are paid for with the HOA's payments to the PMC c) are identified and included in the PMC contract with the HOA d) the events don't result in any separate charges to home owners to complete and e) are not unique or extraordinary with the sale of a home: changing names in a directory (kids move in-out, residents have new children, divorce requires name and resident changes, deaths, etc.); covenant violation and enforcement as this is an ongoing task; billing address and name changes; updates to bank accounts for paying dues and other debt; issuing a current billing statement showing all obligations of the home owner including special assessments and payment schedules for miscellaneous obligations to the HOA; billings and collection costs for delinquent accounts; re-issuing card keys and other security measures for the new home owner; issuing parking passes; providing a copy of a financial statement, reserve study or governing documents all of which are normally accessible on the HOA web site free or no charge upon request else a copying charge may be assessed; identification of special assessments in affect (shown on the final billing to the home seller); pending legal actions/settlement (normally requested by the Title Company with any PMC charges passed on to the home seller); identification of liens as this is the responsibility of the Title Company not the PMC; and any other routine work completed by and expected of the PMC by the HOA home owners.
- 9) PMCs utilize the opportunity to charge a home sale transfer fee to enhance income knowing that neither the HOA Board, Title Company or the home seller's/buyer's Realtor will challenge the fee: it is charged simply because it can be and has become an institutionalized by Realtors and Title Companies who without any question or knowledge of the fee simply get their clients to pay it. Also, since these entities don't understand the fee believing it is legally required, it benefits the HOA, the HOA determines the amount and retains it, that there are significant costs to transfer ownership of a home in an HOA they blindly endorse the fee. Finally, since there is no explanation and no receipt of who is billing and receiving the fee these professionals remain ignorant as to why their client is being assessed the transfer fee. This is detrimental enablement and approval and shows no concern or respect for the seller's finances.
- 10) PMCs should be able to recover and bill for any material, unique, and extraordinary expenses incurred due to the sale of a home. Any special request by an HOA for work to be completed due to the sale of a home should be identified in the HOA's contract with the PMC, noted that the work is optional, billed to the home seller, and identified as a line item on the transfer fee receipt/billing to home seller. A charge to produce a CD/electronic file transfer of governing documents and a copy of the final billing status of the home seller is acceptable and should be limited to not to exceed \$50.
- 11) An HOA's contract cost with the PMC will not be affected when an HOA precludes the charging of a home sale transfer fee. Bids for a contract should consider costs plus a profit margin and "anticipated" income. A PMC lowering their bid based on anticipated revenue from the transfer fee can place the HOA in jeopardy if such revenue is relied upon to deliver services. Low-balling a contract bid by the amount of anticipated income places large, well-funded PMCs in a position that small PMCs complete as their financial resources must be closely and reliably managed.

12) HOA legislation has been introduced to the Colorado legislature several times to contain, restrict, and require transparency and a receipt identifying services to earn the fee. The property management industry has been successful every time in killing the legislation. Other States have contained the fee for the reasons stated above and others are considering restrictive legislation. The fee is mostly a give away and income enhancing scheme/scam by the PMC industry of upwards of \$10-12 million a year.

Legislation is the only means to contain this abusive fee. In particular, require that home sellers be provided a detailed receipt when paying transfer fees; require HOA contracts with PMCs to explicitly indicate what services will be charged to the home seller that are unique, extraordinary, and material related to the sale of a home by line item cost and certifying that all such expenses/work incurred by the PMC are not otherwise or at anytime provided to home owners as part of their contract with the HOA; indicated on the transfer fee billing that all work is required and not optional in the sale of a home in a HOA and which charges have been individually ordered by the HOA and required to sell the home; and that none of the line items on the billing have also been charged to other entities such as a Title Company.