

RESALE & TRANSFER FEES

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I. OVERVIEW

II. HISTORY OF FEES AND CHARGES “DUE ON SALE”

A. Types

- a. Resale Disclosure Fees
- b. “Transfer Fees”
- c. Initial or Resale “Assessments”

III. RESALE DISCLOSURE FEE

A. Resale Disclosure Statement

- A.R.S. 33-1806 (page 23)
- A.R.S. 33-1260 (page 104)

IV. TRANSFER FEE

A. Transfer Work

- Working with title company, seller, buyer, realtor, lender, etc.

- New owner file
- Welcome packet
- B. A.R.S. 10-3302 (16) (page 136)
- C. THIS IS A CONTESTED POINT!

V. RESALE ASSESSMENTS

- A. “Working Capital”, “Reserve Contribution”, “Community Enhancement Fee”, Etc.
- B. NOT IN ANY STATUTES
- C. If not in CC&Rs, violates “uniform rate of assessment” provision found in many CC&Rs
- D. Board can RARELY adopt without a CC&R amendment

VI. NEW REGULATION (2010)

- A. A.R.S. 33-442 (page 226)
- B. Threatens Resale Assessments Only
- C. Bans “Transfer Fees” to third parties
Association is a “third party”
- D. Exceptions 33-442(C) (3), (6), and (7)
- E. Exception 33-442(C) (3)
- F. Does this create a new legitimate fee?
- G. Exception 33-442(C) (7)
- H. Does this create a new legitimate fee?
- I. THIS IS A CONTESTED POINT!

VII. NEW REGULATION (2011)

- A. The association may charge the member a fee of no more than an aggregate of \$400 to compensate the association for the costs incurred in the preparation of a statement or other documents furnished by the association pursuant to this section for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of the property.

- B. Rush fee of no more than \$100 if the rush services are required to be performed within 72 hours after the request for rush services.
- C. A statement or other documents update fee of no more than \$50 if 30 days or more have passed since the date of the original disclosure statement or documents were delivered.
- D. The association shall make available to any interested party the amount of any fee established from time to time by the association.
- E. If the aggregate fee for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of a property is less than \$400 on January 1, 2010, the fee may increase at a rate of no more than 20% per year based on the immediately preceding fiscal year's amount not to exceed the \$400 aggregate fee.
- F. The association may charge the same fee without regard to whether the association is furnishing the statement or other documents in paper or electronic format.
- G. The fees prescribed by this section shall be collected no earlier than at the close of escrow and may only be charged once to a member for that transaction between the parties specified in the notice "required".
- H. An association shall not charge or collect a fee relating to services for resale disclosure, lien estoppel and any other services related to the transfer or use of a property except as specifically authorized in the statute.
- I. An association that charges or collects a fee in violation of this section is subject to a civil penalty of no more than \$1,200.
- J. This section applies to a managing agent for an association that is acting on behalf of the association.
- K. Who is going to get sued???

VIII. ISSUES FOR 1-1-2012

- A. What is the Resale Disclosure Fee?
 - Remember, it is the Association's Fee!
 - Associations outsource.
 - "Member/Seller" owes even if sale falls through.
 - Amount must stay on the / a ledger.
 - Can only be collected at closing.

- B. What is the Transfer Fee?
- Payable at closing only.
 - Charged to seller or buyer?
- C. Who decides the “rush”?
- \$100 extra dollars if required within 72 hours.
 - When would this happen???
- D. Who decides the “update” fee?
- \$50 extra dollars if more than 30 days old.
 - Why would this happen???
 - This should be different than a pay-off request.
- E. Who pays for what?
- Is it a lien?
 - Statutes are not clear.
- F. What was charged on 1-1-2010??
- 20% increase permitted.
 - “Association” or “Management Company?”
- G. Do the CC&Rs matter?
- Yes!
- H. Can the Association also charge a fee?
- Perhaps.
 - Simple Rule: He who does the work gets the fee!
 - Some Associations have COMPLEX situations.
 - Legal opinion often required.