

Community Association Institute
Utah Legislative Action Committee
CAI LAC



Utah's Advocates for Responsible
Community Association Governance

February 9, 2010

“Transfer Fee” Position Statement

The CAI LAC (Community Association Institute Utah Legislative Action Committee) has considered the "transfer fee" issue and takes the following position.

The Issue

A few developers and/or owners of property are recording documents on the title to real property that require payments by future owners to either the party recording the document or a third party. These payments are triggered upon any sale or transfer of the home, in perpetuity. This practice is problematic because (1) as people take title to the home, they may not be provided with full disclosure regarding these future obligations; (2) this causes a potentially permanent reduction in the value of the property to the current and future owners either through the direct effect of the payment or through the threat of litigation and legal entanglements arising from the obligation; (3) the recorded document could negatively impact and/or restrain the future transfer of the property for purposes other than existing uses; and (4) this causes what is perceived to be a generally unfair and unreasonable burden on existing and future owners.

The CAI LAC Position.

The CAI LAC takes the position the particular practice described above should be outlawed because it is unfair, unreasonable, and contrary to the long term best interests of both individual owners and community associations.

Concerns Related to Potential Legislation on this Issue

The CAI LAC is concerned that legislation aimed at solving the problem could inadvertently affect community associations (condominiums / PUDs) by outlawing appropriate administrative set-up charges. In addition, it could inadvertently, and without full consideration, impact or outlaw other fees that are required to be paid by owners in community associations.

The following is a description of certain types of charges and fees payable upon a transfer of a home along with CAI LAC's position on each type of charge:

(1) An administrative Set-up Charge payable upon any transfer of a home in a community association, that is payable to the association and is to compensate the association for real costs associated with the transfer, such as bookkeeping updates and changes, FHA and other lender and guarantor information and compliance requests, management charges, and producing and distributing welcome packets.

CAI LAC's Position. The CAI LAC supports this type of administrative Set-up Charge and believes that any legislation should not prevent this type of charge. The transfer of a home does impose actual administrative costs on an association that can and should be compensated for by the Owners of the home that is being transferred.

(2) Fees payable only upon the first transfer of the home in a community association, that are payable to the association for whatever purpose (reserves, operations, etc).

CAI LAC's Position. The CAI LAC supports this type of charge and believes that any legislation should not prevent this type of charge. This type of charge is equally shared by all owners, is arguably born by the original developer or declarant of the community association, and is generally viewed as a good way to fund either reserves or operations in the early stages of a community association.

(3) Fees payable upon any transfer of a home in a community association, that are payable to the association, for any purpose other than to compensate the association for administrative charges associated with the transfer of the home. Such fees might be to supplement reserves, for specific operational expenses, or for general unspecified operations.

CAI LAC's Position. The CAI LAC takes no position on this type of fee. There are competing policy concerns, some of which weigh in favor of permitting these types of fees and some of which weigh in favor of outlawing these types of fees. The CAI LAC takes no position on this issue and leaves to its members, members of CAI, and other industry representatives to advocate any position on their own behalf.