

Subject: RE: Transfer Fees - Options Being Explored
Date: Wed, 20 Apr 2016 22:20:17 +0000
From: CSD - Seth Woolson <swoolson@chmelik.com>
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Mitch,

I note that the current transfer fee is set at \$125.00 and is listed in SVCA Fees and Fines Schedule under Accounting. My review of SVCA's governing documents does not establish a specific CC&R or Bylaw provision expressly providing for this type of fee. Accordingly, the Board likely enacted this fee under their general powers set forth in Bylaw (2014 edition) Article III(C) Section 16 Powers which states that the Board "shall have all of the powers necessary and convenient to conduct the affairs of the Association and, as provided by law, may do all acts and things except those which are reserved for the members by the Articles of Incorporation, these Bylaws, or the laws of the State of Washington."

There is nothing in the Bylaws, Articles or HOA laws which restricts or governs how SVCA is to charge transfer fees. While it would be preferable if the Bylaws or CC&Rs expressly provided for the Board to set a transfer fee (that would be essentially undisputable), a strong case can be made that the general power of the Association permits the Board to impose this fee in the event someone challenged it. Further, given this fee appears to be Board created based on its general authority, it could likewise modify (increase, decrease, remove entirely) the transfer fee. Also, the Board should be able to direct whether these funds go into operations or capital reserve accounts accordingly.

Regarding lot consolidations, the Bylaws also provide that a requesting party must "comply with the administrative Rules and Regulations and policies adopted by the Board governing lot consolidation." Under the same authority above, a strong argument exists that the Board can impose a "lot consolidation" fee under its Rules, Regulation and policies for consolidation that would be required as part of the consolidation process. These types of fees become even more defensible if the Board adopts a resolution establishing the fee and details why the fee is imposed, i.e. establishes some justifications (staff time, impacts, long-term lost revenue, etc.) for imposing the fee in the first place.

Seth

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