

## **HOA Management Companies Don't Own Your Governing Documents/Financials!**

HOAs hire a management a company as a partner in managing the community. Note the word "hire". There is a contract between HOA property management company (PMC) similar to any contract for services the HOA engages in. The deliverables, rights and responsibilities are defined in the contract and sub-standard or non-compliance with a contract is only acceptable if the HOA Board allows it. Note, "allows it". Thus, homeowner's complaints about inferior deliverables or abusive practices in managing the HOA should be directed at the HOA Board not the PMC. The PMC only does what the HOA Board permits or tolerates, period. Too often, HOA Boards simply cede control over the operations, maintenance and financial decisions of the HOA to the PMC: a very destructive and costly practice. Furthermore, with no State oversight of the PMC industry it is very difficult for homeowners and even the Board to hold a PMC accountable for their actions: this requires a costly and litigious court case.

That being said, let's look at just one aspect of a dysfunctional marriage that can exist between an HOA and PMC: the management of HOA governing documents and financials. Two issues among many stand out: who owns, manages and houses the documents and access to the documents. This may all seem obvious but is a major problem in HOAs. The State of Colorado and an HOA's governing documents are very definitive in addressing a homeowner's rights, with few exceptions, to access to this documentation. The only cost to the requestor is for copying, preparation and mailing. In most cases this information is posted on the HOA website free of charge. Any contract between the HOA and PMC should state this and not leave it to defaulting to State law. A PMC is not allowed to preclude access to HOA documents upon proper request, including financial information, and Board should not stand idly by allowing a PMC to make document access decisions. Next, the role of the PMC in handling, updating and releasing documentation to homeowners and others should be in the HOA contract with the PMC and not assumed. Yes, put this in the contract or you are inviting problems.

What must be understood is that the HOA documents belong to the HOA not the PMC. The PMC doesn't make decisions on how, when and who has access to

documents. The PMC should not be charging any homeowner under any circumstances to provide them the documentation requested: that is the law. This issue is at the top of homeowner complaints. Quite often requests by homeowners for documents including HOA check registers, ledgers and other non-proprietary documentation is denied by a PMC. Even requests by HOA Boards for such records are denied by are PMC. They have no such authority to withhold documents! This behavior by PMCs precludes any ability by a homeowner to audit the financial handlings of funds and can lead to fraud and misappropriation of funds!

PMCs impose charges on home sellers who request HOA documentation to the tune of approximately \$12-15 million+ a year: this is the illegal, unjustified, pay on demand or your home will not be sold HOA Home Sale Transfer Fee. This must end but with lazy and uninvolved HOA Boards and with no affordable out of court dispute court resolution process for HOA homeowner complaints PMCs with the tacit approval of the Board, Realtors and Title companies can violate State law with impunity and enrich themselves.

PMCs in Colorado were licensed in Colorado but the program was ended in 2019. Efforts to license PMCs have been supported through State studies and legislative Bills but such efforts are quickly ended. Thus this two billion dollars a year industry operates with no oversight let alone any accountability.

An HOA Board must exercise its' authority in managing the HOA and over ALL contracts with the community. They must understand that any action or activity by their PMC must be approved contractually or through the consent of the Board: the PMC is not the governing body for the HOA and can't make policy or operational decisions unless approved by the Board. Violations of the PMC contract with the Board including inferior deliverables should not be tolerated. Unfortunately, too many HOA Boards operate with the tail wagging the dog and allow the PMC to act in their behalf. HOA Boards should oversee the activities of the PMC and any violations of the contract or inappropriate actions should be met with Board corrective actions and/or penalties: implement fines mentioned in the contract, withholding payments to the PMC or fire the PMC. A PMC works for the HOA and should have no governance responsibilities within the HOA accept in an advisory capacity or as defined in their contract with the HOA.

