



Andy Mowery <pohoaandy@gmail.com>

Request for Inspection and Copying of Association Records

Andy Mowery <pohoaandy@gmail.com>

Tue, Apr 9, 2024 at 4:14 PM

To: Poudre Overlook HOA at FtC <atftcpoudreoverlook@gmail.com>

Cc: rep.brianna.titone@gmail.com

Walker,

I have confirmed again with Rep. Titone that the standard for fees is "reasonable". Without stating a single reason for charging \$300, it is prima facie evidence of a lack of reasonableness. It's plain english.



Representative Brianna Titone

to me ▾

The costs would have to be "reasonable". I'm not sure how they arrived at the \$300 price point.

If the requested records are not produced by April 17 (the 11th Business Day), CCIOA Section 317(4.5) statutory penalties of \$50 per day would begin to accrue. Since you are not offering a hearing or mediation to resolve a dispute of interpretation, the sole means left to resolve a dispute of this nature would be Small Claims Court. HB22-1137 opened the Small Claims Courts to resolve disputes over production of records related to Section 317, and because the statutory penalty is capped at \$500, a filing then qualifies for the lowest filing fee charged of \$31.00.

The screenshot shows the Colorado Judicial Branch website with a navigation menu and a table of filing fees for Small Claims Cases. The table lists various claimant and defendant categories with their corresponding filing fees.

Category	Filing Fee
Plaintiff: 500.01 to 7,500.00	\$55.00
Plaintiff: up to 500.00	\$31.00
Defendant: (without counterclaim) Up to 500.00	\$26.00
Defendant (without counterclaim) 500.01 to 7,500.00	\$41.00
Party (with counterclaim if Plaintiff's claim is 500.00 or less and counterclaim is 500.00 or less)	\$31.00
Party (with counterclaim if Plaintiff's claim is more than 500.00 or counterclaim is more than 500.00 and not more than 7,500)	\$46.00
Rule 369 Contempt of Court	\$70.00

Unable to afford a filing fee? Visit our [File Without Payment page](#).

I have reviewed the circumstances with several experts, and they have pointed out that the following conditions could result in \$300 being reasonable:

- The Association has a written contract with a CAM that has a minimum fee for document production requests of \$300, or hourly rate equalling the amount

- The number of actual proxies/pages was high enough to justify a verifiable printing expense, and digital production was simultaneously not possible
- There was information on the proxy (contact information such as phone numbers or email addresses) that would justify and require redaction

Since **none of these conditions exist**, and you have confirmed that the only vendor in a position to perform the work (Ms. Hutchinson) **has no written contract**, then **all that is left** is analysis of why the stack of paper from the 12/5/23 and 3/19/24 elections (no more than 60 pages) could not simply either be placed on a table for inspection, or put into a feed-type copier to be converted to a digital pdf file. **Both options are considered reasonable** by the experts I've communicated with.

Therefore, the discussion turns to incentives. The same experts I've spoken with have stated that paying POHOA \$300 is likely throwing my money away with the combination of both an unlikely scenario that the documents are actually produced with information on them (since you state you intend to redact them without stating the actual reason for redaction), and an even more unlikely scenario for recovery of the payment in that circumstance.

On the other hand, **there is an incentive to pay a far lower amount to the Larimer County Small Claims Court of \$31**, which would then at least require POHOA to respond with the reasons that justify a \$300 fee to prove the "reasonableness" of the cost. The Court can then rule impartially, and if necessary provide a Court Order that would require production of the documents under threat of being found in contempt of court. And, while the purpose is to access the documents, the existence of a statutory penalty ensures that if that avenue were to be pursued provides incentive for POHOA to comply in advance of such a filing. It also makes it possible to obtain the documents without absorbing the court cost.

Since there is a legitimate question regarding **whether or not at least 2 directed proxies were, in fact, counted**, and POHOA simply refuses to provide answers to direct questions about the election (number of votes, number of proxies, number of in-person votes, etc), a need to seek a court order to obtain information that the Association has no right to keep secret or private is sufficient justification for filing in Small Claims Court. This is not to mention that the right to demand production of specific Association records is explicit, plainly stated, and within the four corners of CCIOA Section 317.

Therefore, I propose that you review the relevant statutes prior to 4/17/24 and consider whether it is a good faith action of fiduciary duty to risk a substantial statutory penalty over whatever information you are attempting to hide from any homeowner. One of the key aspects is whether you or any of the Directors personally benefit from this, and considering the fact that we have payments to Ms. Hutchinson as a "consultant" amounting to over 10% of the HOA revenue, I sincerely believe that any fair-minded court would find the attempt to charge \$300 without any stated reason, or knowledge of where the funds may be distributed could be considered suspicious or suspect. Since you have been known to personally hold up to 24 proxies at some elections in a community of 87 homes, I believe that the Court could and should consider your use of the position of Secretary to redact the information to be a personal benefit, and therefore call into question whether or not it is good faith execution of fiduciary duty.

I propose that if you can state a legitimate reason for why these documents cannot be scanned into a digital pdf and emailed and must be printed, that the cost per page for production be no more than 3.2 cents per page plus shipping. Below is an estimate from one of several providers who could perform the production of 60 copies (which is the highest number of proxies that can be imagined) for less than \$25. I would present this in court as a reason that production of these documents for \$300 is not "reasonable".

If I do not hear back within 30 days of the date of receipt (4/4/24), I intend to proceed as described above. If you would care to have a hearing on the matter, it would need to be scheduled at a mutually acceptable time. I am not available on demand, as you have attempted in the past because I work for a living and do not have a flexible schedule to attend meetings you schedule unilaterally - and can demonstrate this pattern over several instances in the past year.

The best option remains simply scanning the documents and sending them to me. I do not wish or intend to go to court, but am prepared to do so if all other options have been fully exhausted and the statutory time for response has passed.

Sincerely,

Andy

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Subtotal	\$4.13
PDF Files Cost	\$0.00
Shipping (UPS - UPS Ground)	\$18.24
Order Total	\$22.37

On Sat, Apr 6, 2024 at 8:30 AM Andy Mowery <pohoaandy@gmail.com> wrote:

Walker,

I have been advised to request that you disclose the number of pages respondent to the request (number of proxies for each of the 2 elections). If there is an hourly rate or a 3rd party quote, you are actually required to provide evidence of these actual costs in your estimate for consideration of payment.

Absent these details, it simply looks like an attempt to deter production with an absurdly high cost for an estimated 20-30 pieces of paper for each election.

I have also been told that your presumption of "secrecy" does not pertain to proxies. While ballots are submitted secretly and are not tied to a unit owner, the record of who gives a proxy to another party (which can also be given to someone who is not a unit owner) is open information available to all other members as a right. I do not believe you have actually researched this topic with an actual Colorado HOA attorney and are applying poor judgement as evidenced in your response. Again, if you have a citation, I'm happy to look it over.

Sincerely,

Andy

On Fri, Apr 5, 2024 at 12:04 AM Andy Mowery <pohoaandy@gmail.com> wrote:

Walker,

I have reviewed the response regarding proxies with several CCIOA experts, just so you know I am not expressing personal opinions:

1. CCIOA allows any homeowner to request a complete list of all homeowners with addresses at any time. As such, the names and addresses are not afforded privacy from other members of this non-profit corporation. This is not a disputable matter.
2. As far as I can tell, production of the proxies in an election must not be redacted. Therefore, even if privacy were a legitimate issue (see #1), there is no right whatsoever for the Board, any Director, or any Officer to modify these documents in response to a document request. If you have a citation of any support for such a decision, you would need to provide it.
3. The estimate of \$300 to produce 20-30 proxies is not fair or reasonable. The HOA is not allowed to make a profit on document requests, and is therefore required to demonstrate actual costs, expenditures, or charges. You cannot charge for volunteer time.

Since the HOA does not currently hire a CAM and does not currently contract with any outside vendor, if you are estimating based upon actual bids, then it would be necessary to disclose the documentation of such cost estimates. I would be happy to review actual bids from actual outside vendors.

If, however, this is just an attempt to create a deterrent by suggesting it would cost \$10 per PAGE, I'm pretty sure that if I were to seek injunctive relief, a court would look at the totality of circumstances and rule that the documents should be produced without any cost whatsoever. These are physical documents in a file that I could simply review, snap photos on a cell phone, and be done in less than 10 minutes. There is absolutely no justification for this expense when those facts are considered.

I would suggest that if you consider scanning and emailing them to be a burden, that you simply bring them to the 4/9/24 meeting, along with the ballots you intend to produce, and allow inspection in the same manner.

If you can justify the costs with production of details or quotes from third party vendors, please provide the manner in which you calculated the amount. It would be necessary to immediately disclose the total number of documents (proxies) used in each of the last two elections. You are not allowed to make the party guess as to whether you are, perhaps, misunderstanding the request. Again, there should only be 20-30 pieces of paper for each election, based upon numerous past elections.

Sincerely,

Andy

On Thu, Apr 4, 2024 at 2:11 PM Poudre Overlook HOA at FtC <atftcpoudreoverlook@gmail.com> wrote:

Mr. Mowery:

Please see the attached letter dated April 4, 2024 with regard to your request as captioned above. The original letter has been mailed to you via USPS First Class Mail. This email is being sent to you as a courtesy in advance of our regular board meeting scheduled for April 9, 2024 as set forth in the letter.

Should you have any questions, you may mail them to the HOA at the following address:

Poudre Overlook HOA of Fort Collins
P.O. Box 101
Laporte, CO 80535

Thank you,

Walker Flanary, Secretary
Poudre Overlook HOA of Fort Collins
Board of Directors