Turnberry Towers Community Association
Turnberry Towers West Unit-Owners Association
222 Karen Avenue, Las Vegas, NV 89109
Telephone (702) 650-5260 • Fax (702) 650-5259

April 5, 2011

The Honorable Alfred M. Pollard
General Counsel
Federal Housing Finance Administration
Fourth Floor
1700 G Street, NW
Washington, DC 20552

RE: Proposed Rule on Private Transfer Fee Covenants, (RIN) 2590-AA41

Dear Mr. Pollard:

I am very pleased to write to you again. I wish to express my support for the Federal Housing Finance Agency's actions to stop the collection of Fees that do not help associations or their unit owners. I am also pleased that the FHFA understands that community associations use Transfer Fees to directly benefit the community and its homeowners and residents.

The governing documents for the associations I manage – Turnberry Towers Community Association (TTCA) and Turnberry Towers West (TTW) – require that a Transfer Fee be paid at the time of ownership Transfer and is equivalent to three times the monthly assessment. There are thousands of associations that have a Transfer Fee in place – some with a requirement similar to TTCA and TTW, others with a Transfer Fee of 1/3 of 1% of the sales price as is the case in the community where I own a home.

The primary purpose of all common interest communities is to maintain, preserve and enhance property values. Transfer Fees are used to fulfill that purpose. These Fees should not only be allowed but encouraged. Boards of Directors, whether developer or homeowner controlled, have a legal, ethical, and fiduciary duty to make decisions and govern the communities they serve in the best interests of the community. The developer-controlled boards and homeowner-controlled boards that I have had the privilege to work with during my 11 years in Nevada have, with very rare exception, fulfilled their duties in a manner that is above reproach. I am concerned that the FHFA's proposed rule to limit the use of Transfer Fees to only maintenance and improvements is taking away a board's authority and its right to make decisions on behalf of the corporation in how best to use the funds.

Some Transfer Fees are collected, and per the Association's Governing Documents, are deposited into the Association's reserve account for capital repairs and replacements. However, many Governing Documents, including TTCA and TTW, do not specify such a use and the Fees are deposited into the association's operating account. The Transfer Fees are an integral part of the financial planning and budgeting process for associations because they help fund the services, amenities, and purchases of necessary capital improvements as well as help defray the cost of other budget items, such as insurance and utilities. All of these budget items directly benefit and support the community.

I believe fully in allowing only those Transfer Fees that directly benefit associations and their members. However, the direct-benefit definition should not be narrowly constructed. One direct benefit is equally important to another direct benefit – for instance, why would the FHFA allow Transfer Fees to fund new

capital purchases but not allow those same Fees to help pay for the insurance that protects those purchases?

Another concern is that the draft rule requires that associations allow non-residents use of the common areas and also requires that associations charge a Fee for this access. Neither the board members nor the homeowners in TTCA and TTW wish to charge guests to go swimming, visit the social room, or to play tennis. In fact, homeowners would be adamant in their opposition if this provision is made part of the final rule.

There is no reasonable justification to change how associations use Transfer Fees and the FHFA will only cause new problems by trying to tell boards how to conduct the business affairs of their associations. Associations in Nevada are not-for-profit corporations. These corporations must not be asked to relinquish the right to decide how their common property is used or if and when non-residents are allowed access to it. In addition, it would be an administrative and compliance nightmare. Management's current responsibilities do not include watching our residents 24/7. We have no way of knowing when a resident on the 25th floor and his guest decides to go to the 38th floor to play pool or watch television in the Social Room. The Association would have to pay for the salary of many new employees as well as implement a formal method of charging and a safe method for collecting and processing the access Fees. This would undoubtedly require an increase in assessments.

I understand and thank the FHFA for wanting to protect homeowners and purchasers from unethical and undisclosed Fees. The FHFA is doing a helpful service by banning Fees that are paid to people with no real connection to a community. By attempting to go further, the rule would not be helpful but detrimental (and costly) to the thousands of common interest communities and the millions of residents in those communities.

Most states require that all Fees – required Fees as well as possible Fees (e.g., the costs to collect delinquent assessments) – must be disclosed to a purchaser prior to closing. This is true in Nevada. If the FHFA is concerned that buyers are not told about the Fees that are or may be charged by an association, then perhaps the FHFA might consider adopting a disclosure requirement similar to Nevada's requirement.

As a professional manager and a homeowner in a common interest community, I want to thank you for your reconsideration of these troublesome provisions in the proposed rule.

Sincerely,

Wendy Linow, Supervising Community Manager, CMCA®, AMS®, PCAM®
Executive Manager
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