From: Doris Goldstein <dgoldstein@newtownlaw.com>
Sent: Monday, April 11, 2011 1:43 PM
To: !FHFA REG-COMMENTS
Subject: RIN 2590-AA41 Private Transfer Fees

Dear Mr. Pollard:

I am an attorney with more 28 years experience creating homeowners associations and drafting private covenants and restrictions. The proposed regulation is fine for conventional suburban real estate projects that shut themselves off from the community around them by creating private enclaves. However, I am concerned that the proposed regulation runs counter to the beneficial trend to develop real estate in a way that is more town-like and that provides greater public benefit. This trend is particularly important as local governments continue to cut budgets reduce services.

Corporations organized under section 501(c)(3) or (c)(4) of the Internal Revenue Code must, by definition, provide public benefit and cannot restrict their activities to a particular real estate development. For instance, the IRS (at http://www.irs.gov/charities/nonprofits/article/0,,id=156364,00.html) states that a homeowners' association that wishes to be recognized as a 501(c)(4) must show that its roadways and park land that it owns and maintains are open to the public. Does providing a beautiful park that is open to the public qualify as a de minimis use? Or would that be problematic?

Cultural organizations that are organized as charitable organizations under section 501(c)(3) have an even greater burden to include the public. Without such inclusion, they do not qualify as a charitable organization. Currently, many communities with such organizations rely heavily on transfer fees for their general budget. Does this definition of "direct benefit" mean that an organization cannot make any of its activities available to the public without payment of a fee and must discriminate between residents and non-residents in all of its activities (in which case they may not qualify as a 501(c)(3))? Or does it mean that the fees can only be used only for those particular activities that provide a direct benefit to residents and cannot go to the general overhead of an organization that, because it is a 501(c)(3), provides benefits to the public?

Please consider revising the proposed rule to broaden the definition of "direct benefit" so that it works with, rather than against, the IRS requirements for corporations organized under section 501(c)(3) or (c)(4). These organizations are valuable to communities. They should be able to use transfer fees for their operations so long as they provide substantial—not exclusive—benefits to the community.

Thank you very much for your consideration.

Sincerely,

Doris S. Goldstein

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