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Smart Capital for Smart Growth™

April 11, 2011

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

via: regcomments@fhfa.gov

Attn: Public Comments

Re: RIN 2590-AA41, Private Transfer Fee Covenants.

Dear General Counsel Pollard:

During my service as Secretary of the Department of Housing and Urban Development ("HUD") I saw first-hand the importance of home ownership, and how construction and development plays such a critical role in the U.S. economy. In fact, it is hard to imagine a full, robust economy that doesn't include a vibrant construction industry as a primary component.

Unfortunately, our country continues to face significant challenges in the hard-hit construction sector. Construction-related unemployment is at disastrous levels, and project funding is simply not available. At the same time, Fannie, Freddie and other government-sponsored entities are struggling under mounting losses. As both job losses and foreclosures mount, prices decline, and the vicious downward circle tightens. It is critical that we begin focusing on private sector solutions for interrupting this cycle, and I believe that private transfer fees (also called capital recovery fees) can help.

By recovering infrastructure costs over time, instead of embedding the costs within the sales price, home ownership becomes more affordable, and projects become viable. In addition, commercial projects also benefit from assessing development costs over time. By selling the future income stream, project funding can be made available, reducing negative equity and restoring project viability. This translates into a growing construction industry and significant employment.

Additionally, the vast majority of private transfer fee covenants in this country allocate a portion of the fee to non-profit uses such as affordable housing. This creative, long-term private-sector source of funding can help relieve the burden caused by tightening government budgets and the resulting reduction in public funding for our nation's affordable housing programs.

Opponents of private transfer fees allege that the fees are hidden. However, the fees are fully disclosed in the public records, and more than 12 million homes in this country have a transfer fee, yet there are few if any reported problems. This concern can be further alleviated through disclosure legislation (such as H.R. 6332, introduced in the 111th Congress).
Opponents also suggest that a private transfer fee restrains alienation. Again, there is no evidence to suggest that this is true, and indeed it is hard to imagine how a modest transfer fee (typically 1% or less) will impede the sale of real estate. The reality is that the market will adjust the sales price to reflect the fee.

Opponents suggest that a private transfer fee is payable to an unrelated third party, yet it is hard to imagine how a developer who builds a master-planned community, and installs long-term infrastructure, is an unrelated third party. Few parties are more related. The fact that the future income stream is sold to investors, or that developers voluntarily elect to partner with other firms in order to maximize the benefit, should be irrelevant.

The reality is that private transfer fees have the potential to help fund infrastructure, reduce negative equity, make home ownership more affordable, and create jobs, while also funding important societal goals such as affordable housing. I urge policymakers to adopt disclosure legislation that allows the responsible use of this important private sector funding tool while helping to ensure a fully informed consumer.

Sincerely,

Henry Cisneros

Henry Cisneros
Executive Chairman
CityView