CALIFORNIA ASSOCIATION OF REALTORS®

April 11, 2011

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA41
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552

Re: Regulation on Private Transfer Fee Covenants; RIN 2590-AA41

Dear Mr. Pollard:

I am writing on behalf of the California Association of REALTORS® (C.A.R.) and its 170,000 members to comment on the Federal Housing Finance Agency's (FHFA) proposed regulation on private transfer fees (PTFs).

C.A.R. strongly supports FHFA prohibiting Fannie Mae, Freddie Mac, and the Federal Home Loan Banks from dealing in mortgages on properties encumbered by private transfer fee covenants, and I was extremely optimistic to see FHFA issue its proposed rulemaking; specifically, language that grandfathered in existing PTFs so current owners of properties burdened by these covenants are not further harmed. However, while the proposal is a step in the right direction, C.A.R. has serious concerns that exempt entities and loose definitions will create loopholes rendering the prohibition useless.

As a result, C.A.R. is asking the FHFA to reinstate language proposed within its Guidance on Private Transfer Fee Covenants (No 2010-N-11) prohibiting all entities from burdening a property with a PTF. C.A.R. is strongly opposed to allowing homeowner associations, condominiums, cooperatives, and tax-exempt organizations to charge homebuyers a PTF..

C.A.R. would also like to clarify that contrary to how the proposed rule would allow nonprofits to levy PTFs, in practice nonprofits are nothing like homeowners associations. The proposed exception effectively "swallows the rule" thereby eviscerating the prohibition on PTFs and inviting the extortion of developers by non-profits. In other words, all of the problems FHFA has identified as being associated with PTFs will continue only they will do so with the blessing of the FHFA.

For over twenty-years developers in the state of California have faced outright extortion from nonprofits who threaten legal action to block construction. These nonprofits drop their legal action following agreements

to establish PTFs to fund their causes. Developers are happy to agree to this since the PTF is paid for by home buyers – not the developers.

Even if used for the direct benefit of the property C.A.R. must oppose these fees. It is clear the FHFA's definition of a "direct benefit" is far too broad. The proposed rule states "traditional real estate-law requires that, to be binding, a covenant running with the land must benefit the land that it burdens." C.A.R. believes FHFA's definition of "direct benefit" which would allow these fees to be used for cultural, educational, charitable, recreational, and environmental purposes, as well as for conservation of the community, common areas, and adjacent or contiguous properties goes far beyond any acceptable standard for directly benefiting the encumbered property. Further, FHFA's proposed rule provides no language regarding oversight and enforcement to ensure PTFs are, in fact, used for the direct benefit of the property, and C.A.R. fails to see how such language could be crafted to ensure there are no violations of the rule.

Lastly, a nonprofit allows no input by homeowners as to how the funds generated by a PTF should be used to directly benefit the property. The decision of how a PTF should directly benefit the encumbered property should never be determined by, and administered through, an entity that is not empowered to do so by the homeowners paying the PTF. Too often backroom deals secure funding for entities and programs which the homeowner and the community have no say. FHFA should take this opportunity to put an end to this deceitful and unethical practice.

As stated in our letter to FHFA dated October 15, 2010, C.A.R. continues to oppose PTFs and would like to reiterate our belief that there are a number of problems associated with them, including:

• **The fees are imposed on buyers every time the property sells – and can last forever.** PTFs are collected for as long as mandated by the deed. There are no limits – the fee can be imposed indefinitely. And, every time the typical home is sold, the beneficiary of the fee collects a hefty sum – up to $10,000 or more.

• **There are no limits on the amount of the fee.** The highest rate C.A.R. is aware of is currently 1.75% of the home's value – but there's no limit!

• **Allowing non-profits to collect the fee invites extortion of the fee from developers.** Non-profit groups have threatened developers with legal action to block construction. The establishment of a PTF payable to the non-profit is the resulting compromise which the developer is happy to agree to since the PTF is paid for by home buyers – not the developer.

• **Allowing homeowner associations, condominiums and cooperatives to assess the fee endangers their financial wellbeing.** HOAs already possess the authority to asses fees on owners as part of their HOA dues. The PTF is assessed on only new home buyers to the detriment of the homeowner association. These entities do not want to assess current homeowners and would rather place the burden of covering the costs of maintaining needed reserves and performing needed maintenance on new home buyers via PTFs.

Additionally, C.A.R. believes the existence of PTFs threaten the financial stability of HOA reserve accounts because HOAs with PTFs will come to rely on PTFs as a source of revenue which is only generated by sales. This can, and we believe will, create a false feeling of security leading HOAs to underfund their reserve accounts believing that PTFs assessed on sales will make up any reserve account deficit.

As a result, C.A.R. strongly believes that if HOAs are going to be allowed to levy PTFs, they should only be permitted for HOAs that are in states that require regular reporting to the residents of the HOA as to the status of the reserve account. Hopefully, if the HOA is relying too heavily on PTFs to fund the reserve account, such reporting will result in pressure from the residents on the HOA to appropriately fund the reserve account.

• **There are few controls over how the collected revenue is spent.** The entity levying the PTF is largely free to decide how the money is spent – with no control by government, and no requirement that the fee benefit homeowners who paid the PTF in a manner desired by those homeowners. Generally speaking, if said homeowners want specific benefits to accrue to their properties, there are any number of ways in which those homeowners can assess themselves to pay for those benefits.

• **The lack of sufficient disclosure results in potential home buyers not understanding the cost of the fee.** California's law addresses FHFA's concern that "disclosures may be insufficient and add costs not fully understood by consumers." Under California law (Civil Code, Section 1098.5), a PTF on a residential property must present actual dollar-cost examples of the fee for a home priced at $250,000, $500,000, and $750,000. (Note: C.A.R. pursued this disclosure legislation only after being unable to prohibit PTFs outright.)

• **The fees put homeownership farther out of reach for more families.**

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According to a recent study by the C.A.R., every time the cost of a home increases by $10,000, another 200,000 purchasers can't afford to buy a home.

For the foregoing reasons, C.A.R. is strongly opposed to allowing the continued imposition of PTFs. California law is currently silent as to the legality of PTFs and C.A.R. will continue to seek legislation in California to outlaw their imposition on home buyers.

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions.

Sincerely,

Beth L. Peerce
C.A.R. President

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