April 5, 2011

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

Dear Counselor Pollard:

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

For the past 15 years my husband and I have been resident members of a Planned Unit Development in Fresno, California. For more than 35 years I have worked in Real Estate Management. I am writing to express my support and concern for recent action by The Federal Housing Finance Agency to stop investors from charging exorbitant fees when buying or selling homes in planned communities.

Regarding the matter of 'transfer fees', it is my experience that professionally managed community associations in California do not charge them. Some associations are still self-managed, so the transfer fee is necessary to off-set their cost to provide all the information required to close escrow. The transfer fee charged by Property Management Companies is paid by the buyer and seller at close of escrow to reimburse management for their cost to facilitate their escrow in compliance with California Statute and Federal Law.

It is important for FHFA to understand that homeowner associations are non-profit corporations operated by volunteer homeowners elected by the membership. They conduct association business in compliance with the Articles of Incorporation, Bylaws and Covenants, Conditions & Restrictions. Self-government is important to the membership. We value our right to participate in deciding how our association is governed and operated. We have a vested interest in protecting our property values and quality of life.

My other concerns include:

1. The requirement that our association allows non-residents access to, and use of the common area facilities for a fee. That decision belongs to the owners who pay monthly assessment fees to maintain and insure the amenities in their association.

2. The definition of 'community association' developed by the National Conference of Commissioners on Uniform State Laws in the Uniform Common Interest Ownership Act (UCIOA) already ensures that all community associations meet FHFA qualifications. It works. Why not adopt it nationally?

3. The FHFA definition of "Direct Benefit" degrades the private property rights of residents in common interest communities by limiting their exclusive right to govern the use of their common property and common elements.

4. The Definition of "Excepted Transfer Fee Covenant" does not clearly define the transfer fee it seeks to prohibit. Different language to add clarity would simplify the proposed rule by defining the transfer fees the agency seeks to prohibit as well as the fees the agency seeks to permit.

5. The FHFA decision that a community can't vote to have a community transfer fee support property that is more than 1,000 yards from our main property line does not make sense. This limitation would be especially troublesome for larger communities that may consist of a master association and many smaller sub-associations. If my association owns property, we should be able to maintain, manage, and improve it with association funds. The physical location should not be relevant.

I support FHFA interest in protecting homeowners and purchasers from unethical and undisclosed fees. However, I cannot support the proposed method of doing so. As presented, it penalizes prospective buyers by limiting their access to affordable loans. In California, the State requires all fees be disclosed to a purchaser prior to closing. If FHFA is concerned that people don't know about the fees that are charged and/or paid to associations in other states, I recommend they adopt this State's disclosure system.

Thank you for your attention.

Sincerely,

Delight Ortiz, Resident Member
WINDSOR NORTH HOMEOWNERS ASSOCIATION
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Fresno, CA 93705