

April 7, 2011

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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 an attorney licensed to practice law in the State of Connecticut and I represent common interest communities on a regular basis.

I am writing to express my support for the Federal Housing Finance Agency's actions to stop investors from charging fees every time houses are sold in planned communities. These fees do not help my clients' properties and do not help their communities. FHFA is right to prohibit this type of fee.

I am also pleased that FHFA understands that community associations use transfer fees and that these fees help lower monthly association assessments and make sure my clients' communities are properly managed and maintained. Associations have used transfer fees for decades. Community transfer fees are an important way that residents have decided to fund the services they receive from their associations.

It is important for FHFA to understand that residents make up the associations that govern their communities. They hold elections for their association boards and vote on budgets and major decisions that affect their homes and community.

While I am pleased with many of the changes made by FHFA to its proposed guidance, there are provisions in the revised draft that are cause for concern. First, I am concerned that FHFA, by limiting the use of community transfer fee funds solely for maintenance and improvements, is taking away elected boards' authority to make operational decisions on how best to spend this money in support of their communities. Community associations use these fees for maintenance, support, operations and the provisions of amenities. All these functions directly benefit and support the property upon which the fee is charged. FHFA attempts to do too much in its rule banning investor transfer fees by telling associations that those revenues can only be used for some direct-benefit purposes and not for others.

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Another concern is that the draft requires that associations allow non-residents use of the common areas and that they must charge a fee for this access. Associations may want to charge a fee for the use of their facilities, but this is their decision. Just because a community may vote for a new a transfer fee doesn't mean it should be required to give up its right to decide how its common property is used or if and when it allows non-residents access to it.

Finally, FHFA's decision that a community can't vote to have a community transfer fee support property that is more than 1,000 yards from a community's 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 an association owns property, its members should be able to maintain, manage, and improve it with association funds. The physical location should not be relevant.

I understand that FHFA wants to protect homeowners and purchasers from unethical and undisclosed fees. That is a goal I firmly support. FHFA is doing a good thing banning fees that are paid to people with no connection to a property every time that property is sold and this makes sense. By going farther than this, FHFA is not helping.

Most States require all fees paid to an association be disclosed to a purchaser prior to closing. This is a best practice that is adopted across most of the country. If FHFA is concerned that people don't know about the fees that are paid to associations, then perhaps FHFA could consider adopting this State disclosure system.

Many States have passed laws to prohibit investor transfer fees while leaving in place fees that are reinvested in communities through their associations. FHFA should follow the States' lead and go after the problem—investor transfer fees. There is no justification to change how associations use transfer fees and FHFA will only cause problems by trying to tell residents how to manage their communities.

Sincerely,



Robin A. Kahn

RAK:jd

cc: Community Associations Institute (via email)