

From: David Van Atta [dvanatta@hanvan.com]  
Sent: Wednesday, August 18, 2010 5:24 PM  
To: !FHFA REG-COMMENTS  
Subject: RE: "Guidance on Private Transfer Fee Covenants, (No. 2010-N-11)"

To:

regcomments@fhfa.gov

RE: "Guidance on Private Transfer Fee Covenants, (No. 2010-N-11)"

This is in response to the above referenced suggested Guidance.

The undersigned is an attorney based in California that has extensive experience representing home builders.

I do not believe that this Guidance is warranted and believe that it could cause great concern as to real estate lending for residences in California. The imposition of the described transfer fees is not necessarily wide spread, but has been imposed by covenants by real estate developers in this State. The practice was proper, although recently there has been some legislation that may have limited this practice.

The problem is that there are several instances where real estate developments have an established and valid transfer fee mechanism.

I am concerned that this ruling would preclude FHA, FNMA or FHLMC financing to those situations where there were already established and valid transfer fees. The property owners in those projects would most likely not be able to eliminate the provisions that created these fees. The process for amending documents to eliminate such fees would face nearly impossible obstacles.

From a pure financing viewpoint, the issue is whether such a fee really adversely impacts the "financability" of the property from an underwriting perspective? I think that it is not appropriate or well founded for a federal agency to dictate that lenders cannot in any instance make or buy loans with these fees already in place in jurisdictions where the fee imposed is legal and proper. The lender can and should do the underwriting and determine if the fee adversely impacts the ability of a borrower to service his or her property ownership.

Particularly in this difficult economic climate, it would be counter productive and unfair to create a blanket barrier to homeowners obtaining financing simply because the existence of such a transfer fee.

David Van Atta

-----

David M. Van Atta

Hanna & Van Atta

525 University Ave, Suite 600

Palo Alto, CA 94301

Phone: (650) 321-5700

Fax:(650) 321-5639

E-mail to [dvanatta@hanvan.com](mailto:dvanatta@hanvan.com)

<http://www.hanvan.com>

-----

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

-----