

From: Barry Wilkins [barry@advantagemanagement.com]  
Sent: Wednesday, September 08, 2010 2:31 PM  
To: !FHFA REG-COMMENTS  
Subject: Transfer Fee Covenants

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

Dear Mr. Pollard:

Our firm represents approximately 7400 units that reside in 94 different homeowners associations in the State of Utah. We have discussed the issue of transfer fees and reinvestment fees with our boards and wish to express our strong opposition to the Federal Housing Finance Agency's Notice of Proposed Guidance on Private Transfer Fee Covenants published in the Federal Register on August 16, 2010. If implemented in its current form, the guidance will have a significant negative impact on all of the homeowners within these association. I respectfully request the proposed guidance be either withdraw in its entirety or revised to ensure that the one in five American households living in these community associations continue to have access to mortgage credit.

As is the case with the vast majority of community associations across the country, 99% of our associations employ a covenant or deed-based transfer fee/reinvestment fee to fund critical community operations and to ensure the association is able to sufficiently fund ongoing and unanticipated costs. The elimination of deed-based transfer fees will reduce operating budgets by thousands of dollars each year. This loss of association income means our homeowners will face higher assessments, and reduced services that attracted them to these community in the first place, or both. This loss of income increases the likelihood of special assessments, which often are a significant and unanticipated financial burden on our homeowners.

With recently enacted reserve requirements in the State of Utah, our homeowners are already suffering the burden of significant dues increases and assessments. Many senior homeowners on fixed incomes are suffering from these increases and unable to sell their homes due to values decreasing substantially. This guidance will have a deep impact on the many senior citizens in the communities we serve as the majority of them have no other sources of income and are unable to return to the workforce.

These fees directly benefit homeowners in the communities as they ensure maintenance of adequate reserves and provide funds for the constant increasing obligations of the associations. These funds protect the values for all residents which is a considerable benefit for those purchasing homes in these communities.

I am deeply troubled by the many changes, proposed changes, and proposals that are detrimental to our 7400 owners. I am also troubled by FHFA's unsubstantiated finding that GSE purchases of or investments in "mortgages encumbered by private transfer fee covenants...would be unsafe and unsound practices and contrary to the public mission of the Enterprises and the Banks." In our experience, we observe the opposite to be the case. Rather than destabilizing communities by threatening to depress home values, FHFA should support the use of covenant or deed-based transfer fees that benefit homeowners and support home values. It is unknown if FHFA contemplated the impact of its proposed guidance on homeowners living in associations with deed-based transfer fees when developing its proposed guidance. Compliance with FHFA's guidelines as proposed would be cumbersome and in some instances impossible. Covenant or deed-based fees are attached to a property's deed or are contained in the covenant establishing association governance. These fees are, by design and by their nature, difficult to rescind. Most associations require 2/3's vote to rescind or change their covenants. In our experience this is extremely difficult to accomplish. In the past year we have attempted to revise or adopt covenants in at least 15 communities and in all but one case only received 20-35% of the ballots back.

Given the extreme difficulty associations across the country face in removing deed-based restrictions or modifying their community covenants, it is likely a significant number of homeowners will no longer have access to mortgage credit if FHFA's proposal is not withdrawn or revised. In its proposed guidance, FHFA suggests the elimination of mortgage financing for properties with a deed-based transfer fee will protect the nation's "still fragile housing markets." Rather than protecting housing markets, this short-sighted regulatory guidance will put downward pressure on home values in these communities and cause even more severe financial hardship on homeowners.

There are certain deed-based transfer fees that the State of Utah has eliminated and that I believe do not serve a legitimate purpose. FHFA identified these fees in its proposed guidance. Fees that are paid at closing directly to a third party that makes no investment in the association serve no other purpose than to enrich the fee recipient at the expense of homebuyers. This is why several state legislatures including ours have considered legislation to void or require disclosure of private transfer fees that solely benefit unrelated third parties. This is the appropriate venue to address private transfer fees, as property law and the practices governing real estate transactions are in the purview of state and local governments. State and local governments are intimately familiar with local real estate markets and are, therefore, able to create solutions to problems appropriate to housing in their states. Finally, deed restrictions and covenants constitute a binding legal agreement between two parties that may only be voided in certain circumstances by Act of Congress or state law. FHFA's attempt to restrict the use of all private transfer fee covenants through guidance does not have the force or effect of law. As a result, the guidance will accomplish little more than to create substantial uncertainty in the community association housing market, which includes one out of every five homeowners nationwide.

I appreciate the opportunity to comment on FHFA's proposed guidance on private transfer fee covenants, and I strongly urge FHFA to reconsider its proposal to ban all covenant or deed-based transfer fees.

I am available to discuss or provide additional insight at your request as you consider these issues.

Sincerely,

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