

September 8, 2010

Edward J. DeMarco  
Acting Director  
Federal Housing Finance Agency  
1700 G Street, NW  
4th Floor  
Washington, DC 20552

Dear Mr. DeMarco:

We are writing on behalf of the Northern Virginia Association of REALTORS® to support the Federal Housing Finance Agency's (FHFA's) proposed guidance on the use of private transfer fees for the Federal Home Loan Banks (FHLBs) and the government sponsored enterprises (GSEs) Fannie Mae, Freddie Mac. We fully support the FHFA guidance that states the FHLBs and the GSEs should not purchase mortgages encumbered by private transfer fees and that such purchases are not prudent, safe or sound investments.

As you know, a private transfer fee occurs when a developer agrees to add a covenant to the deed of each new home, or a homeowner agrees to add a covenant to an existing home's deed, that requires future owners of the property to pay a percentage of the selling price to a designated beneficiary. While the percentage fee paid is tied to the home price, it does not correlate with any tangible benefit received by the home buyer.

Private transfer fees increase the cost of homeownership, do little more than generate revenue for developers or investors and provide no benefit to homebuyers. They place an inappropriate burden on the transfer of property. By inserting a third party that is due a fee long after the party's interest in the property has ended, the transaction is no longer between the buyer and seller.

Moreover, there is virtually no oversight on where or how proceeds can be spent, on how long a private transfer fee may be imposed, or on how the fees should be disclosed to home buyers. Because the only notice of the transfer fee exists in the land record, most buyers will not find out about the fee until the title search is done just prior to settlement. This prevents buyers from fully evaluating the purchase of a home with a private transfer fee.

The transfer fee rule is a covenanted mandate so it is extremely difficult to reverse the requirement once it is in place. Title companies are concerned about tracking beneficiaries in the future. Because the covenants typically cover a 99-year time frame, it is possible that the original lien holders may no longer exist. Title agents, buyers and sellers will now be challenged to identify the third party that no longer exists but that must be paid a fee to avoid a lien on the property and provide a clear title to buyers and their lenders.



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The Federal Housing Administration (FHA) recognizes the impact of private transfer fees. The US Department of Housing and Urban Development (HUD) General Counsel has confirmed that private transfer fees clearly violate HUD's regulations which prohibit legal restrictions on conveyance and require lenders to convey clear marketable title.

Thank you for your time and consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Vinh Nguyen". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Vinh Nguyen  
Chairman of the Board