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September 9, 2010

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency, 4th Floor
1700 G. Street North West
Washington DC 20552

RE: Public Comments "Guidance on Private Transfer Fee Covenants, (#2010-N-11)"

Dear Mr. Pollard:

I am writing to express my opposition to the proposed guidance on private transfer fee covenants. In reviewing this proposal, it is obvious that the FHFA has failed to undertake any legitimate study and analysis with respect to transfer fees. This is apparent by the frequent use of the word "may" throughout the proposed guidance. The FHFA makes broad statements without the slightest factual background to support them. By doing so they are failing to carry out the mission statements of the three governmental agencies which were apparently consolidated to form the FHFA and as set forth on the web site of the FHFA. In reality the proposal of the FHFA has the opposite effect of its stated purpose. In its proposal it sets forth seven perceived adverse consequences that transfer fees "may" cause.

(1) "Increase the cost of homeownership, thereby hampering the affordability of housing and reduce liquidity in both primary and secondary mortgage markets." To the contrary, transfer fees in reality reduce the cost of home ownership by 1% due to the fact that the developer can reduce the sales price to the initial purchaser by securitization of his transfer fee rights. This reduced cost will subsequently be passed on to future buyers. The FHFA has absolutely no empirical data whatsoever to support this assertion, further more there is absolutely no rational thought process which supports the statement that it would reduce liquidity in both the primary and secondary mortgage markets. The only action which would reduce the liquidity in both the primary and the secondary mortgage markets is in fact the actions which are being proposed by the FHFA.

(2) “Limit property transfers or render them legally uncertain thereby deterring a liquid and efficient housing market.” Here again the FHFA makes a broad and unsubstantiated statement with no facts to support it. In fact the opposite has been proven by the fact that transfer fees have been used for years which are payable to homeowners associations.

(3) “Detract from the stability of the secondary mortgage market, particularly if such fees will be securitized.” The first and most obvious question is what do they even mean by this statement? How could the securitization of transfer fees in any way effect the stability of the secondary mortgage market? The simple answer is doesn’t.

(4) “Exposed lenders, title companies and secondary market participants to risk from unknown potential liens and title defects.” Here again it is obviously that the FHFA does not understand how transfer fees work. If they had a true understanding of transfer fees they would realize that this statement has absolutely no validity whatsoever. As previously stated, transfer fees with respect to homeowners association have been around for years and have not created the problems which the FHFA perceives. Secondly there would be no unknown potential liens due to the fact that a simple title search conducted by a competent attorney or title insurance company would quickly reveal the existence of transfer fees. Attached hereto is the front page of the typical declaration of covenant which in bold print on the very front page states: **“NOTICE: THIS DOCUMENT MAY REQUIRE PAYMENT OF A FEE IN CONNECTION WITH A TRANSFER OF TITLE.** Closing information: Seller shall pay one percent (1%) of the gross sales price (see ¶ 5 and 6) to obtain an estoppel letter (¶ 8) or contact trustee for assistance with closing (see ¶ 10 and ¶ 14).” If the person searching the title follows these very simple instructions they will obtain an estoppel letter setting forth that there are no outstanding liens on the property. This is the same process which has been used for years with respect to outstanding mortgages. As to the assertion that it will cause title defects, it should be noted that title companies have now begun putting exclusions in their title policies with respect to transfer fees. Consequently, there could be no title defects and there could be no exposure to lenders or title companies if they do a simple title examination prior to closing any loans. With respect to the secondary markets again there is no basis in fact for that statement.

(5) “Contribute to reduced transparency for consumers because they often are not disclosed by sellers and are difficult to discover through customary title searches particularly by successive purchasers.” The document attached hereto and quoted with respect to number 4 above clearly disproves this assertion. For the FHFA to state “they are often not disclosed by sellers” is made without any factual basis whatsoever. In fact I challenge the FHFA to bring forth any evidence which supports this statement. For the FHFA to conclude it would be difficult to discover through the customary title searches indicates that whoever at the FHFA came to this conclusion has no clue as to how to do a customary title search. If they did they would recognize the fact that the document attached hereto is one which would be easily discovered during a customary title search.

(6) “Represent dramatic, last minute, non-financeable out of pocket costs for consumers and can deprive subsequent homeowners of equity value.” This statement is made purely out of ignorance of how transfer fees work. There is nothing “dramatic” about a 1% fee. It is also not a “last minute” out of pocket cost any more so than the paying of property taxes,

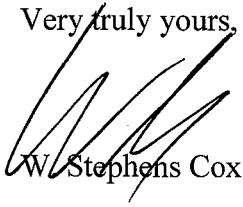
real estate commissions or any other typical closing cost. With respect to it being “non-financeable” this simply proves that the FHFA does not understand that this 1% fee is being taken out of the sales price and does not require financing. It should also be pointed out that this 1% fee is substantially less than a 6% real estate fee which I would classify as “dramatic”. With respect to it depriving a homeowner of equity value as previously stated this is not true due to the fact that the property initially sold for 1% less and these savings were passed on to subsequent buyers. The one thing however that does deprive homeowners of equity value, increases the cost of home ownership and discourages the liquidity of property is the 6% real estate commission, which is excessive. If this agency wants to do something that would really improve homeownership and the affordability thereof they should cap real estate commissions at 3% nationwide.

(7) “Complicate residential real estate transactions and introduce confusion and uncertainty for home buyers.” It is difficult to see what would be complicated about a 1% fee and how it could cause confusion and uncertainty of home buyers. It is the simple process of reflecting a 1% transfer fee under the “reductions in amount due seller” on the standard HUD-1 Settlement Statement. Apparently the members of the FHFA who have proposed this rule are not familiar with the HUD statement and should obtain a copy to educate themselves as to how real estate transactions actually take place.

It is equally apparent that the FHFA gave very little thought to the implications of this proposal and the effects that it would have on Fannie Mae and Freddie Mac. This mandate would require that before purchasing any mortgages, Fannie Mae and Freddie Mac have a title search done on every mortgage to determine whether or not there was a transfer fee that applied to the property in question. This would create an impossible burden and effectively destroy those two institutions. The irony of this requirement is that the FHFA has concluded that transfer fees are “difficult to discover through customary title searches”. If in fact that were true then it would also be difficult for Fannie Mae and Freddie Mac to determine whether or not there were transfer fees that applied to the mortgages in question so that they could determine whether or not they could or could not purchase them. These guidelines also ignore the fact that transfer fees have been around for a number of years with respect to homeowners associations and that individuals purchased properties prior to these regulations being concocted and therefore they now have properties which might be more difficult to mortgage because of these proposed guidelines. This in effect would hamper homeownership which presumably is what this guideline is intended to enhance. Due to the fact that this proposal is retroactive it is certain that litigation will be spawned by this guideline.

It appears that this proposal is being promoted by someone outside of the FHFA and that the true motive of the FHFA is not being disclosed. The FHFA should be required to disclose who outside of the agency has suggested that they propose such a regulation so that the public knows the true motives behind this proposal. Furthermore, the FHFA should make decisions based upon fact as opposed to what “may” happen. In this particular instance they have obviously done none of their homework and cannot point to any facts which support this broad and sweeping proposal which in reality would have the opposite effect of that which they propose. For these reasons I request that this proposal be denied.

Very truly yours,

A handwritten signature in black ink, appearing to be 'W. Stephens Cox', written over the printed name.

W. Stephens Cox

WSC/lsl

Enclosures



**NOTICE: THIS DOCUMENT MAY REQUIRE PAYMENT OF
A FEE IN CONNECTION WITH A TRANSFER OF TITLE**

Closing Information: Seller shall pay one percent (1%) of the Gross Sales Price (see ¶5 & ¶6). To obtain an Estoppel Letter (see ¶8) or contact Trustee for assistance with closing (see ¶10 & ¶14).

DECLARATION OF COVENANT

STATE OF MISSISSIPPI

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF HOLMES

This Declaration of Covenant (this "Declaration") is made by [REDACTED] whose mailing address is [REDACTED] (hereinafter "Declarant") for the purposes herein set forth as follows:

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property ("Property") located in Holmes County, State of Mississippi, described as follows:

The real property described in Exhibit "A" attached hereto and incorporated herein for all purposes.

NOW THEREFORE, Declarant hereby declares that the Property shall be transferred, held, sold and conveyed subject to this Declaration and all matters set forth in this Declaration, which shall be deemed covenants running with the land and the title to the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof:

1. **DEFINITIONS.** In addition to words and phrases defined elsewhere in this Declaration, the following words when used in this Declaration shall have the following meanings:
 - a. "Beneficial Interest" shall refer to an undivided ownership interest in the rights, interest, ownership and privileges in and to this Declaration, apportioned pursuant to section 17 and thereafter in accordance with section 18 or as otherwise provided herein.
 - b. "Beneficiary" shall refer to the owner of a Beneficial Interest.
 - c. "Closing Agent" or "Settlement Agent" shall have its customary meaning within the real estate industry, and generally shall refer to the party responsible for conducting and/or facilitating a closing of a conveyance of all or any portion of the Property; usually either a title company, attorney or escrow agent who prepares paperwork and conducts