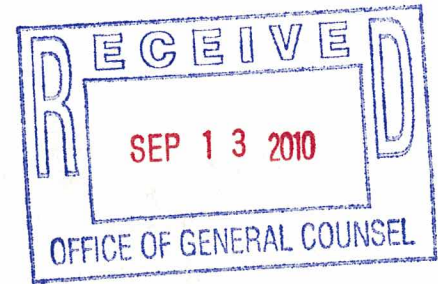


September 8, 2010

The Honorable Alfred M. Pollard
General Counsel
Federal Housing Finance Administration
Fourth Floor
1700 G Street, NW
Washington DC 20552



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

Dear Mr. Pollard:

I write to express my 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 significantly negative impact on all homeowners living in the **Palm Valley Home Owners Association, Palm Desert, Ca. 92211**. I respectfully request the proposed guidance be either withdrawn in its entirety or revised to ensure that the owners of the 1274 homes in our community association continue to have access to mortgage credit.

The members of the **Palm Valley Homeowners Association** are subject to a covenant transfer fee paid directly to a third party and although not used to fund Association operations provides a benefit to our homeowners as described below. The covenant providing for transfer fees is a binding legal agreement with a third party and in this case cannot be rescinded. The effect to members of the **Palm Valley Homeowners Association** of the FHFA's proposal to eliminate mortgage financing for properties with covenant based transfer fee will be to severely reduce the value of the homes in the community due to uncertainty or inability to access the mortgage markets to facilitate home sales. 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 regulatory redlining of healthy associations and creditworthy borrowers such as **Palm Valley Homeowners Association** will put downward pressure on home values in these communities and cause severe financial hardship on homeowners who have done nothing wrong.

Palm Valley Homeowners Association was incorporated on April 24, 1984 and has used a covenant based transfer fee since that time. The experience of our association is that the fees directly benefit homeowners in the community, as they are paid to **Palm Valley Country Club**, a third party, co-located on the property occupied by the Homeowners Association and used by the **Club** to supplement funds for the general obligations of the **Club**. The successful operation of the **Country Club** and its recreational venues protects the values of homes in our community for all residents, which is a considerable additional benefit for the individuals purchasing a home in our community. That is why I am 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." From my practical experience, I 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. Indeed, it is unclear if FHFA contemplated the impact of its proposed guidance on homeowners living in associations

with covenant 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. The Covenants contained in the **Palm Valley CC&R's** could only be rescinded with the consent of the third party **Palm Valley Country Club** to whom they are paid. The Club's agreement to rescind the covenant would most assuredly be based upon the imposition of other fees and charges to the homeowners to replace the revenue stream currently provided by transfer Fees. Given the near impossibility of removing or modifying **Palm Valley HOA** community covenants, it is likely a significant number of our homeowners will no longer have access to mortgage credit if FHFA's proposal is not withdrawn or revised

There are certain deed-based transfer fees that may not serve a legitimate purpose and FHFA identified one such fee 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 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 familiar with local real estate markets and are, therefore, able to craft solutions to policy problems appropriate to housing in that state. 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 to eliminate mortgage financing will accomplish little more than to create substantial harm 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.

Sincerely,



ARTHUR C. COULTER, Esq.
Homeowner and Member of the Board
Palm Valley HOA, Inc.