

From: Robert Thornton [Robert@rsthornton.com]  
Sent: Tuesday, September 14, 2010 11:50 AM  
To: !FHFA REG-COMMENTS  
Subject: RE: Guidance on Private Transfer Fee Covenants (2010-N-11)

dear concerned -

please accept this note as my opinion and guidance on the residential property Transfer Fees currently under debate. i am a custom homebuilder in boerne, texas, just outside of san antonio. i have read of the brewing tranfer fee dispute in a recent New York Times article and Builder magazine/newsletter. i can understand and empathize with both sides of the argument, those developers and market makers who are in favor of the transfer fees and the real estate professionals and (likely) purchasers who are opposed. i was particularly appalled by the example in the Times article of a developer who sold properties without disclosing transfer fees in contractual and/or title documents, but rather only in the subdivision covenants.

my simple opinion is this: any fee(s) should be allowed in a free market, but ALL fees should be fully and clearly disclosed in contractual sales documents and legal (title) closing documents.

ultimately the marketplace will choose to reward or punish the developer(s) for their decision - that is, if the marketplace is fully apprised of what they are purchasing. if transfer fees exist in one subdivision but are non-existent in a competing and adjacent subdivision then the marketplace will judge and cast their opinion of the fee(s) when deciding to purchase property, and at what cost. it stands to reason that if two identical products are presented at the same price, one with transfer fees and one without, that the product without fees will sell and re-sale more promptly - or, the fee-less property will require an equal sales period but bring a higher price.

the key is clear and consise full disclosure. as a builder of high end custom homes i have a great deal of experience with a developer who require fees (percentage of total contract) when building for a client within their subdivision, and realtors who require fees (percentage of total contract) for the referral of a custom home client. in both cases it has been extremely uncommon that the developer or realtor disclose to the prospective client that they will be commanding and receiving a fee. i therefore am left with the burden of declaring in contractual form that a fee will be paid to the developer or realtor and that this fee will be included as a cost of the project. i take on the burden of this declaration as an act of full disclosure, and as much as the client may dislike the sound of it the result is invariably this: they respect me for the disclosure, and they are repulsed by the fact that the recipient didn't disclose the expectation of fees themselves at the time of lot sale or referral.

the fact of the matter is that an earned fee is accepted by the market, regardless of the type or amount. an unjustified or overpriced fee isn't acceptable - and therefore tends to remain in the dark (non-disclosure) or is buried in the small print.

your consideration of these comments is greatly appreciated.

sincerely,

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