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Sent: Tuesday, September 14, 2010 12:34 PM
To: !FHFA REG-COMMENTS
Subject: Guidance on Private Transfer Fee Covenants (2010-N-11)

To Whom it May Concern:

As an industry veteran who is both a developer, contractor, and real estate broker I see both sides of the private transfer fee issue.

My concern is when private transfer fees only benefit previous owners/developers and when these fees offer little benefit to current and future property owners.

From a developers perspective if the private transfer fee goes towards infrastructure maintenance (not financing for development) and other HOA items, as approved by a majority of the non-developer owned units, then there doesn't appear to be an issue so long as the fee is modest - say under 1% of the transaction price. However, if the developer is seeking a kicker on a 2nd or 3rd generation re-sale then these fees should be prohibited as there is no benefit to the homeowner or the HOA.

One area where I have recently seen private transfer fees is in the fix-and-flip foreclosure business where some foreclosure entrepreneurs are inserting private transfer fees into the title chain. In most cases the next buyer doesn't pay attention to the restriction until it is time to sell which is often 5-7 years down the road. In some instances a buyer without knowing it may be purchasing a property with marketability problems due to the fee.

As a broker I can go either way on this one. While it is true that brokers will likely get the commission grind from a seller once they recognize the inflated transfer fee, it is ultimately up to the broker to stand strong on commission. Again, if the private transfer fee is reasonable, say under 1% of the transaction price, there shouldn't be much impact on brokers. However, in an environment where fees only increase and tend to never decrease, I don't think another transaction fee is warranted.

One other factor is that many municipalities are increasing real estate transfer taxes. In the greater Los Angeles area where the baseline transfer tax is \$55 per \$1,000 of value, some cities have tacked on additional fees raising the total by a factor of up to 600%. At such high transfer tax rates marketability is an issue.

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