

From: Ryan [ryan@rficonsulting.net]  
Sent: Thursday, September 16, 2010 11:49 AM  
To: !FHFA REG-COMMENTS  
Subject: Guidance on Private Transfer Fee Covenants No. 2010-N-11

I understand that this ban has been proposed because it is believed that private transfer fee covenants may impede the marketability and the valuation of properties, may raise homeownership costs, and may contribute to reduced transparency for consumers because the fees are not disclosed by sellers and are difficult to discover through customary title searches.

First, I understand that these types of fees have been imposed on thousands of properties for many years, with the fees benefiting all kinds of beneficiaries including homeowner associations, charitable foundations and organizations, etc. Given that, it should be easy to gather hard data to determine whether they actually HAVE impeded marketability, valuations, or raised homeownership costs. And, there should also be hard data on the number of claims against title companies because the fees were not disclosed.

This ban will have a huge negative impact on thousands or hundreds of thousands of homeowners. Given the fact that thousands of transactions involving private transfer fee covenants have already closed, this type of action should be based upon actual harm that has been determined from those transactions, and not upon theory or hypotheticals.

Second, if these fees have impacted marketability or valuations, that would simply impact the fair market value of the property. So, if the research shows that private transfer fees have impacted marketability or valuations, then the appropriate response would be to make sure the appraisers take that into consideration when they appraise the property. And, frankly, if these fees have impacted marketability and/or valuations, the market has likely already adjusted for that fact and these properties are selling for less. In either event, the risk to Fannie Mae or Freddie Mac is eliminated if the valuation of the property has been adjusted by the market and/or appraisal.

It is my understanding that these private transfer fee covenants are typically created by for-profit builders and developers. I may be a cynic, but find it hard to believe that these profit seeking capitalists would place covenants on their properties that impeded marketability. But, it should be easy to determine by comparing marketability of subdivisions with and without these covenants. If the data shows that existing private transfer fee covenants have actually impeded the marketability of property or increased homeowner costs, then that should be the basis for this debate.

Finally, I have seen some discussion that private transfer fees created for the benefit of non-profits should be allowed, but those with for individuals or profit beneficiaries should be banned. The beneficiary of the fee is irrelevant. These fees either do or don't impact marketability and valuations. If they do, they do no matter who the beneficiary is.

It would be easy to gather hard facts about the impact of private transfer fee covenants on property. There is no reason to debate theory; particularly when this action can harm so many homeowners. And, if there is some impact, the appropriate response for Fannie Mae and Freddie Mac is to make sure the appraisal has properly considered that impact, so any risk to Fannie Mae or Freddie Mac has been mitigated.

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