



RIVERFRONT PARK

Denver's Central Park Neighborhood

October 4, 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 the Riverfront Park Association's 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 Riverfront Park in Denver, Colorado. I respectfully request the proposed guidance be either withdrawn in its entirety or revised to ensure that the one in five American households living in a community association continue to have access to mortgage credit.

OUR STRUCTURE

As is the case with the majority of community associations across the country, the Riverfront Park Association, a master association that covers approximately 1,500 homes now, and close to 2,000 upon completion, employs a covenant or deed-based transfer fee to fund the Riverfront Park Community Foundation, which then targets those funds toward non-profit charities that make the community in which we live a better place, with a focus on under-served youth, arts and education. The elimination of deed-based transfer fees will not directly impact the budget of the Association, but would reduce our organization's impact on the arts and underserved youth by approximately \$200,000 each year. This reduction in association income would likely mean the closure of a nationally recognized arts-based youth organization organized in our community, as well as have a significant impact on the budget of an art museum in our neighborhood, before even considering the negative impacts directly to our homeowners.

DISASTROUS TO EXISTING HOMEOWNERS

But regardless of that impact, there are 1,500 residences that would immediately be impacted by the inability to sell their homes because the availability of financing would be greatly restricted. These are homeowners that knowingly signed up for being in a community that gives back.

The Riverfront Park Association was organized in 2001 and has used a deed-based transfer fee to finance community non-profits since this time. The experience of our association is that the fees directly benefit homeowners in the community, as they are able to more significantly impact underserved children and the arts community in Denver through a single voice, and support organizations that provide for those in need. Other communities support their association's operations through such a model, and this guidance could prove disastrous to their financial well being.

The presence of such a transfer assessment has not negatively impacted property values or the ability to transfer properties in our neighborhood. 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 already living in associations with deed-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 in our case, are contained in the covenant establishing association governance. These fees are, by design and by their nature, difficult to rescind. Some associations require 100 percent agreement between current owners to alter covenants while some require a super-majority vote of all homeowners in the association. In other instances, the fees are recorded in the deed itself. Ours, in particular, would require a 51% vote of three classes of membership in order to amend the Declaration. This is not a matter of collecting votes at a meeting; this is quite literally a vote of all members, and would require a large percentage of voters to take note of the requested change, and then to vote in favor of it. It also would not pass without 51% of three separate classes, so if one class of voters could not collect the votes necessary, they would be held hostage to a lack of mortgage funding.

Given the difficulty associations across the country face in removing deed-based restrictions or modifying community covenants, it is likely a significant number of homeowners will no longer have access to mortgage credit if FHFA's proposal is not withdrawn or revised. 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 will put downward pressure on home values in these communities and cause severe financial hardship on homeowners who have done nothing wrong. More homeowners might be forced into foreclosure that could otherwise sell their home in an improving Denver market.

ONE EXCEPTION THAT SHOULD BE RESTRICTED

There are certain deed-based transfer fees that we believe do not serve a legitimate purpose and FHFA identified one such fee in its proposed guidance. Fees that are paid at closing directly to a developer or

other consortium that provides no benefit to the community are contrary to the intent of these assessments 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 will accomplish little more than to create substantial uncertainty 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,

A handwritten signature in brown ink, appearing to read 'Amy Cara', with a long, sweeping horizontal flourish extending to the right.

Amy Cara

President, Riverfront Park Association