

From: Andrew Bernstein [abernstein@jdtplaw.com]
Sent: Monday, October 04, 2010 9:28 PM
To: !FHFA REG-COMMENTS
Subject: Attention: "Public Comments Guidance on Private Transfer Fee Covenants (No. 2010-M-11)"

General Counsel Pollard

I am writing to urge you to REJECT the proposed guidance No. 2010-N-11 relating to private transfer fees as it is currently written.

The abusive practice of using transfer fees for purely private gain can be curtailed without disturbing the legitimate use of transfer fees for homeowner or community benefits. We can all agree that these fees should not be used to benefit a builder or developer directly but should be a benefit to the individual homeowner or community at large. It is also essential that these fees be fully disclosed and in fact California law already ensures that transfer fees here are fully disclosed to homeowner and home buyers.

It should also be noted that these private transfer fees are a benefit to homeowner and the community and are a small fraction of the fees charged by real estate agents as sales commissions. Sales commission on these transactions can be as high as six percent of the price of the property and provide no benefit to the homeowner or community.

As proposed, this guidance would have a severe negative impact on the operations of homeowners associations, environmental groups and affordable housing programs that rely on these disclosed fees for their operations. A transfer fee has a real value to a individual homeowner or community when used in specific circumstances that benefit the homeowner or community, such as use by homeowners associations (HOAs), non-profit organizations, or governmental agencies to build and maintain community enhancements or promote important community benefits such as open space, habitat and other environmental values, affordable housing, and transit improvements.

With a high percentage of mortgages (by some estimates 90%) insured or backed by Freddie Mac or Fannie Mae, this proposal would effectively preclude the use of transfer fees for homeowner and community benefits, removing a critical tool for building strong communities and dealing another blow to homeowners at a time when the markets are struggling to recover.

Approval of this guidance as written is ill-advised and should be REJECTED. The FHFA should instead adopt transfer fee standards that protect individual homeowners and community benefits while prohibiting abusive fees that are used solely for private gain. At a minimum, the comment period should be delayed and extended for a significant time to allow for the thoughtful and transparent consideration of the impacts of such a change.

Sincerely,

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