

September 30, 2010

115 Lincoln Avenue
Haddonfield, NJ 08033

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 my 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 material adverse impact on all homeowners living in the community in which I have owned a residence for almost 20 years, Birchwood B Condominium, Quechee, Vermont. I respectfully request that the proposed "Guidance" either be withdrawn in its entirety or revised to ensure that the 1 in 5 American households living in a community association continue to have access to mortgage financing.

As is the case with the majority of community associations across the country, Birchwood B Condominium Association employs a covenant transfer fee to fund, in part, community operations and to ensure that the association is able to fund ongoing and unanticipated costs. The elimination of covenant based transfer fees will reduce our association's operating budget. This reduction in association income means that our homeowners will face higher association assessments, a reduction in the services that attracted them to our community in the first place, or both. Additionally, this loss of income increases the likelihood of special assessments, which often are a significant and unanticipated financial burden on our homeowners.

Birchwood B Condominium Association was organized in the early 1970s but did not impose a fee on transfers of ownership until the last few years - after careful consideration of all of the equities. Most importantly, the fee was imposed by the unit owners UPON THEMSELVES when we amended and restated our Declaration to include the transfer fee. We chose to pay this fee when and if we convey title to our units as a fair way of sharing the costs of living in our community.

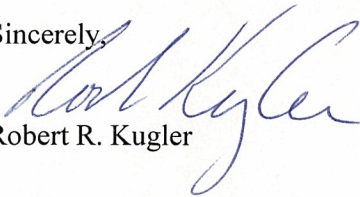
The experience of our association is that the monies raised by the transfer fee directly benefit homeowners in the community, as the fees help to insure maintenance of adequate reserves and provide funds for the general obligations of the association. This protects the value of our units for all residents, a considerable benefit for those individuals who purchase in our community. That is why I both question and am troubled by the FHFA's unsubstantiated finding that GSE purchases of mortgages 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."

I have been a practicing attorney in the field of community association law for more than 25 years. From my experience, I observe the opposite to be the case. Rather than destabilizing communities by threatening to depress home values, the FHFA should support the use of covenant or deed-based transfer fees that benefit homeowners and support home values. Indeed, it is unclear if the FHFA contemplated the impact of its proposed guidance on homeowners living in associations with deed-based transfer fees when developing its proposed guidance. Compliance with the "Guidelines" as proposed would be cumbersome and in some instances impossible. Covenant or deed-based fees run with the title to the units in the community. These fees are, by design and their nature, difficult to rescind. As the author of the Amended and Restated Declaration which encumbers title to units in our association, it would take a vote of at least two-thirds of the percentage interests in the community to abolish the transfer fee.

There are certain deed-based transfer fees that I believe do NOT serve a legitimate purpose. The FHFA identified one such fee in its proposed "Guidance". Fees which are paid at closing directly to a third party that makes no investment in the association serve no purpose other than to enrich the fee recipient at the expense of homebuyers. That is why several state legislatures have considered legislation to void or require disclosure of private transfer fees that solely benefit unrelated third parties. State legislation is the appropriate vehicle for addressing the elimination or limitation of private transfer fees. 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 their respective locales.

I appreciate the opportunity to comment on the FHFA's proposed "Guidance" on private transfer fee covenants, and I strongly urge the FHFA to reconsider its proposal to ban all covenant or deed-based transfer fees.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert R. Kugler", written over the typed name.

Robert R. Kugler