



October 7, 2010

Mr. Alfred M Pollard, General Counsel      *Delivery: regcomments@fhfa.gov*  
Federal Housing Finance Agency  
1700 G. Street NW 4<sup>th</sup> Floor  
Washington, DC 20552

Dear Mr. Pollard:

**Re: Public Comments “Guidance on Private Transfer Fee Covenants, (No.2010-N-11)”**

I am writing you today to ask for consideration in excluding certain organizations from the proposed guidelines that will restrict Fannie Mae, Freddie Mac and the Federal Home Loan Banks from investing in mortgages with private transfer fee covenants. To clarify, we are not asking you to exclude a deed restricted transfer fee that would offer private gain of any person.

The types of organizations that should qualify for exclusion from the proposed guidelines include entities recognized by the IRS as 501(c)(3), 501(c)(4) and 528 not-for-profit corporations. The states in which they have been organized may also have laws that cover not-for-profit organizations and may be referred to as Nonprofit Public or Mutual Benefit Corporation laws.

These types of organizations are also known as homeowners associations, and various types of community service organizations. They are typically created for the benefit of charitable purposes, social welfare purposes, environmental purposes, civic betterment and social improvements, and to sustain the real estate infrastructure in the case of a homeowners association.

In California, approximately one third of the housing stock includes homeowners associations (“HOAs”). They were created to shift the financial burden for common area maintenance from local government to the HOA itself in order for the homeowner to govern and maintain the “bricks and sticks” of their community. HOA’s also afford the 9 million California homeowners who live in them a very democratic process of governance, administration and financial preservation.

Obviously disclosure is an important aspect for an individual who may be purchasing a home subject to payment of a private transfer fee at the time of sale. California has significant disclosure requirements when purchasing real estate with these types of communities so that there are no “surprises” for the purchaser. Additionally, the Davis Stirling Common Interest Development Act, the principal body of law governing HOAs in our state, also has specific disclosure requirements of the governing documents, financial operations, governance structure, etc., when an individual is considering a purchase in an HOA.

23461 South Pointe Dr.

Suite 200

Laguna Hills

California 92653

949.916.2226

800.363.9771

Fax 949.916.5557

info@cacm.org

www.cacm.org

However, if FHFA were to consider requiring an additional disclosure to the prospective purchaser related to a deed restricted transfer fee, CACM would be willing to support this effort and offer comment on the language proposed by the FHFA to improve transparency for the consumer.

Recently, I reviewed several samples of Articles of Incorporation of 501(c)(3) and 501(c)(4) organizations and noted that the language in several of the Articles limited the corporation from “*engaging in any activities or exercising any powers that are not in furtherance of the purposes of this corporation.*” Another Article stated, “*No part of the net earnings of this corporation shall inure to the benefit of any of its directors, trustees, officers, private shareholders, or member or to an individual.*”

The Articles in one of the samples I reviewed also prohibited the Corporation from participating in or intervening in any political campaign or support for a candidate for public office. This language makes it very clear that the organization does not personally benefit a private person or other entity.

We are concerned that the prohibitions you are considering will create additional burdens on California homeowners. Foreclosure rates are higher in our state as is our unemployment rate compared to the rest of the Nation. For example, some communities in the San Diego and Sacramento area are experiencing foreclosure rates of over 40%-50%. The burden of making up the difference in loss of HOA revenues is then placed on the owners who are paying their mortgages and their fair share of assessment obligations. Many have expressed they too are on the precipice of not being able to keep their home.

If the FHFA prohibits loans in communities with private transfer fees, one logical conclusion would be for the members of the secondary organization to dissolve the corporation and shift the financial burden to the partner HOA which then has to increase monthly assessments to make up the difference. Dissolution of an entity like a Community Services Organization is extraordinarily costly due to legal fees, filing fees, and copy costs associated with obtaining a membership vote. The process could take years during which time the thousands and thousands of constituents still subject to the private transfer fees would be virtually be unable to sell their homes no matter what the asking price.

California also has statutory requirements for the governing body of the HOA related to the financial operations and collection of assessments to maintain the infrastructure of the HOA. California Civil Code Section 1366.1, cites the following, “*an association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which is it levied.*” During the annual budget planning process, the board of directors creates a “zero-based”

budget, based on this statute. The result is that the HOA collects the assessments only to maintain the HOA. There is no extra money to be found and the loss of assessment monies described in the preceding paragraphs are not recoverable.

We share this first-hand knowledge with you so that you can understand the potential impact if the regulations FHFA is proposing, is implemented against common interest communities and similar organizations. Property values will suffer even more so than they are now. Lending and refinancing will range from difficult to near impossible for these communities and the individuals who live in them. The hurdles are already overwhelming and homeowners are in real trouble.

There are many more circumstances and real-life scenarios we could provide you that would convey how detrimental the restrictions being proposed will create. Instead, we ask that you actively listen to the concerns being expressed to you and the FHFA, by many organizations and coalitions providing public comment and unique insights.

CACM respects and applauds your efforts to mitigate the abusive practice of deed -restricted transfer fees for purely private gain. We request that you curtail these practices without disrupting the legitimate and holistic use of deed restricted fees for the types of organizations we have described to you.

Thank you for your time and we look forward to your feedback.

Very truly yours,

/s/

Karen D. Conlon, CCAM  
President & CEO

cc: CACM Legislative Affairs Committee  
CBIA  
Save Community Benefits Coalition  
Community Association Institute