

From: communitymanager [communitymanager@woodlakeonline.com]  
Sent: Monday, October 11, 2010 4:42 PM  
To: !FHFA REG-COMMENTS  
Cc: government@caionline.org  
Subject: Guidance on Private Transfer Fee Covenants, (No. 2010-N-11)

September 27, 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 am writing on behalf of the Woodlake Community Association Board of Directors, staff and residents to strongly urge amendments 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 profoundly negative impact on all property owners and residents living in Woodlake Community Association. I respectfully request the proposed guidance be either withdrawn in its entirety or revised to ensure that the one in five American households living in a community association and the more than 8,000 residents in this community continue to have access to mortgage credit.

Woodlake Community Association utilizes a covenant-based transfer fee to fund critical capital improvements to our community. The elimination of deed-based transfer fees will reduce our operating budget by approximately \$40,000 each year. This reduction in association income means 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.

Our community implemented a transfer fee in order to compete with newer, more attractive communities. As an aging community (30 years), we compete with newer communities that offer 2-car garages, maintenance free exteriors, new appliances, etc. While the Association cannot retrofit existing homes to meet those criteria, we can create additional amenities and transform our existing infrastructure to meet those modern expectations. Doing so will enable us to continue competing in the marketplace and help prevent the decline of property values in the future. The fund has enabled us to embark on a campaign to replace and modernize our main entrance signs and landscape, replace 54 individual neighborhood entrance signs, replace dying landscape throughout the community and address other issues that result due to the age of our community. We have added new bike trails to connect people with places and created a grant program so that residents can add landscaping to our common areas. All of these initiatives provide a direct benefit to our residents and help each owner maintain and enhance their individual property value - the most basic function of a community association.

Our association residents, staff members and Board of Directors are deeply 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." 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 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 are contained in the covenant establishing association governance. These fees are, by design and by their nature, difficult to rescind. In order to amend our governing documents, Woodlake Community Association must hold a special vote of the membership and a quorum of 60% of the total membership must vote and at least two-thirds of those votes must be cast in favor of the amendment. On average, approximately 31% of the membership votes in our annual election. Amending our governing documents does not occur with frequency and when done, takes a tremendous amount of money and time. Amending our governing documents is not a quick or easy process, which makes the impact of this rule even more significant to Woodlake residents. These costs would be passed on to our homeowners, most likely through a combination of additional fees as well as a reduction in services and staff at the Association. More importantly, should we not be able to achieve the amendment, our residents would be faced with the inability to sell their property, which would inevitably cause a significant decline in property values!

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.

There are certain deed-based transfer fees that 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 third party that makes no investment in the association serve no other purpose than to enrich the fee recipient 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.

Thank you for providing the opportunity to comment on FHFA's proposed guidance on private transfer fee covenants, and we strongly urge FHFA to reconsider its proposal to ban all covenant or deed-based transfer fees.

Sincerely,

Julie W. Joyner, CMCA, AMS, PCAM

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