

INDIGO RUN COMMUNITY OWNERS' ASSOCIATION COMMENTS ON FHFA  
PROPOSED GUIDANCE DOCUMENT NO. 2010-N-11

By way of background, Indigo Run is a gated community located on Hilton Head Island, South Carolina. We currently number approximately 1000 lots, 801 of which are built out, 7 are under construction and the remainder are privately held lots. The community developer has long since left the community so that our comments here do not pertain to communities where the developer may be on-site. The community association, the successor in interest to the developer's homeowner association is comprised of lot/home owners and owners of independently owned recreational facilities, IE. golf, tennis and swimming facilities. The roads, lagoons, lighting, drainage, community hall and operations buildings as well as common areas are maintained by the Community Association. A series of covenants bind the members of the community and provide governance for the Community. These covenants are recorded at the courthouse and are public record which a normal title search will disclose. The Association was formed in 2001 and obtains revenue from annual assessments and gate fees. The Covenants also provided, *ab initio*, for a transfer fee of ½ of the annual assessments to be paid by the Seller upon transfer, the fee amounted to approximately \$500. In 2007, by 2/3 vote of the entire membership, the transfer fee was increased to 2 times the annual assessment or, as of 2010, approximately \$3000. At that time, the Board of Directors had researched other transfer fees from other communities many of which charge 1% of the transaction price. Our Board felt, and the community agreed, that the association should begin putting monies aside for capital repair and replacement. Further, it was felt that use of common areas, roads etc were used equally by owners and the fee should be uniform regardless of the house value. A long term capital replacement plan was developed and has served as a guide for capital replacement needs. Lastly, the current home values in Indigo Run run from the upper \$400,000 to several million, depending on location and views. In our current fiscal year, the Association has expended over \$300,000 on road repaving alone.

With the foregoing as background, it has been this Community's experience that the transfer fee helps the community and home values for the simple reason that the property presents itself as a well maintained and desirable place to live and as importantly, a healthy capital reserve fund indicates that the need for high impact special assessments is significantly reduced. Despite the economy, we have 7 houses under construction, reflecting the continued desirability of our Community. Lastly the fee is the obligation of the Seller, not the Buyer, so that new owners are not faced with paying for a prior owner's use of the infrastructure.

In our situation, it is our view that none of the Agency's concerns pertain to our situation. In III FHFA Guidance to the Enterprises and the Banks, we respond as follows: (1) By reducing the probability of special assessments and prudent funding and investing our capital reserve, we believe the costs of home ownership in Indigo Run are reduced as are unplanned expenses. (2) We are unaware of any case where the transfer fee has adversely affected or slowed any transfer, nor, in our opinion, have any transactions between Buyer and Seller been curtailed due to our transfer fee. (3) As the fee is paid by the Seller, we are hard pressed to see these fees being securitized. (4) In South Carolina, attorneys who

do most, if not all the real estate settlements, are well aware of the transfer fees and we are contacted on or before each settlement for the fee amount. Since 2007, to our knowledge, no transaction in our community (except bankruptcies and foreclosures) has seen lien or title defects arising from transfer fees. (5) Any assessments or debts to the Community Association are recorded at the courthouse in accordance with South Carolina law and are searchable. (6) We believe that the transfer fee avoids dramatic costs by reducing the need for special assessments which can be far more devastating and costly than our modest transfer fee. (7) The Real Estate Community in Hilton Head is well aware of the transfer fees as are the closing attorneys and title companies

In our view, the Guidance advice has not been properly vetted and distinctions must be made between developer contrived transfer fees to receive more revenue and transfer fees levied by true homeowner associations who have tried to prudently accumulate funds for reinvestment in the community. In addition, we have seen tremendous complications in the mortgage market caused by recent regulatory changes that has far more complicated an already distressed housing market. We would encourage the FHFA to reassess its position in general and, at least, distinguish between Developer run community associations and true homeowner run associations. Further, exceptions should be made for seller paid transfer fees, fees recorded on public record and some consideration should be given to exempting a small percentage of the maximum conventional loan limit from these guidelines.

Respectfully Submitted,  
John R. Welty, President  
Indigo Run Community Owners' Association, Inc.