

From: John Graham [jegarts@aol.com]
Sent: Tuesday, October 12, 2010 11:56 AM
To: IFHFA REG-COMMENTS
Cc: Darla Vetter; Dianne Harnell Cohen; donnabnichols2@bellsouth.net; garnie@serenbe.com; Janice Barton; Lisa Bianco; Lynn Merrill; Mary Warren; Phyllis Bleiweis; Rawson Haverty; Roy Godwin; Russ Kiefer; Sam Harrison; Sandra Storrar; Shelton Stanfill; Steve Nygren; Tim Mosby; Tom Blum; Tom Reed; Tom Swantson; Tom Tomlinson; Tucker Berta; Wendy Murray; John Hartman; Martin Sickles; William Smith
Subject: Guidance on Private Transfer Covenants (No. 2010-N-11)
Importance: High
ATTN: Mr. Stephen Cross
Deputy Director

In response to the proposed guidance regarding private transfer fees, the board of directors of the nonprofit **SERENBE INSTITUTE FOR ART, CULTURE & THE ENVIRONMENT, INC.** believes that such a ruling would have devastating impact on the quality of life and the property values in the Serenbe community and surrounding areas in the rural Chattahoochee Hill Country.

Serenbe is a 1,000 acre community located under 30 minutes from Atlanta's Hartsfield-Jackson International Airport. It is a national model for the future of balanced development in the U.S.—focusing on land preservation, agriculture, energy efficiency, green building, walkability, high density building, arts and culture, and community living for multiple generations. With a projected 70% of future building occurring in the greenfield, Serenbe demonstrates how urban development models can succeed on the edge of a metropolis while preserving a vast majority of the greenspace. Serenbe's ultimate goal is to demonstrate how development can accommodate the need for housing with minimal impact on nature—Serenbe's land plan call for a preservation of at least 70% of the acreage, while accommodating as many or more people as traditional subdivision-style development, which would disturb nearly 80%.

The residents of Serenbe, through an intensive public dialogue, have identified the community's core values:

- o **Nature...** because people can live more fully when connected to nature's wonders
- o **Passion...** because living passionately is the most rewarding of lives
- o **Creativity...** because creative people live lives of great passion, and can help the rest of us do the same
- o **Community...** where people are accepted for who they are, not what they are

We have a vision for Serenbe as:

- o a community where people authentically live, work, learn and play in celebration of life's beauty
- o a place where connections between people, nature and the arts are nourished

The non-profit **Serenbe Institute for Art, Culture & the Environment** is dedicated to making this vision real. It presents programs in the arts...both visual and performing...that feature local artists, bring artists of unique talent and creativity to our community and our neighbors, and foster emerging artists from Serenbe, the Chattahoochee Hills, and greater Atlanta. The Institute is a leader in presenting community events for young and old, building a strong,

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resilient, and sustainable community of people who share this vision. It supports educational and environmental programs in the surrounding Chattahoochee Hill Country. The Serenbe Institute plays an important role in the protection and enhancement of our community's natural environment. Its programs celebrate the extraordinary natural beauty of Serenbe and its surroundings; it is in the forefront of efforts to protect this precious asset for generations to come.

The Serenbe Institute is governed by a volunteer board of directors representing the community and its neighbors. Most directors are actively engaged in presenting programs for the community, such as the Serenbe Photography Center, the Serenbe Playhouse, and a full range of activities in the visual and performing arts. Major initiatives in learning, health and wellness, and community building are among the Institute's priorities. The board is responsible for the Institute's programs, its fiscal stability, and its successes in meeting the needs of the Serenbe community. The Institute is the recipient of property transfer fees paid on the sale of real estate and homes in Serenbe. These are supplemented by contributions from individuals, foundation grants, corporate sponsorships, and other revenues.

In direct response to the agency's position on private transfer fee covenants, we respectfully submit the following:

FHFA POSITION	SERENBE RESPONSE
<p>FHFA has found that the typical one percent fee at the time of resale is neither a minimal nor a reasonable amount; further, such fees may be in excess of one percent. Such fees increase by a meaningful amount the seller's and potentially the buyer's burden at the time of a property sale.</p> <p>Expanded use of private transfer fee covenants poses serious risks to the stability and liquidity of the housing finance markets.</p>	<p>Five years' experience in Serenbe has shown that the existence of a 1% transfer fee on homes has never been a disincentive to sales, but has, in many cases, been a positive incentive for the buyer. The fee, paid to the nonprofit 501c3 SERENBE INSTITUTE FOR ART, CULTURE & THE ENVIRONMENT, INC., is frequently viewed as a personal investment in the civic life of the community; funding programs and projects that reflect the buyers' personal desire to live in an active and engaging artistic and cultural environment, one that celebrates and protects a unique physical environment.</p> <p>As stated in Section 2 of the bylaws of the Serenbe Institute, and as authorized in its Articles of Incorporation, the purposes of the Institute are exclusively charitable or educational, within the meaning of section 501(c)(3) of the Internal Revenue Code:</p> <p><i>2.2 The purposes of the corporation shall include, but shall not be limited to, the following:</i></p> <p><i>a) To promote the fine arts, traditional arts and folk arts, the performing arts and humanities, and to utilize the aforementioned arts and humanities as catalysts in the improvement and enhancement of the environment.</i></p> <p><i>a) To promote the environment, nature and</i></p>

	<p><i>agriculture.</i></p> <p>b) <i>To promote lifelong learning and a lifestyle marked by health and wellness.</i></p>
<ul style="list-style-type: none"> • Contribute to reduced transparency for consumers because they often are not disclosed by sellers and are difficult to discover through customary title searches, particularly by successive purchasers; • Represent dramatic, last-minute, non-financeable out-of-pocket costs for consumers and can deprive subsequent homeowners of equity value; and, • Complicate residential real estate transactions and introduce confusion and uncertainty for home buyers 	<p>The real estate sales and closing process used in Serenbe make clear from the very beginning that a transfer fee will be paid to the nonprofit Serenbe Institute. The fee is revealed completely in all good faith estimates provided to buyers, and is paid at closing.</p>
<p>To the extent that private transfer fee covenants benefit unrelated third parties, one cannot claim that a service or value is rendered to the relevant property owner or community.</p> <p>Even where such fees are payable to a homeowners association, unlike more typical annual assessments, they are likely to be unrelated to the value rendered, and at times may apply even if the property's value has significantly diminished since the time the covenant was imposed.</p>	<p>In a community like Serenbe, where buyers are attracted because civic involvement, cultural and artistic enrichment, and environmental stewardship are core values, the return on the transfer fee investment is clear and important to potential buyers. This return is measured in terms of lifestyle, personal fulfillment, and aesthetic enhancement; all important additions to the property's initial value and over time.</p> <p>Residential property values in the future will be determined much more by the perceived value of community, healthy environments, and sustainable lifestyles (shorter commutes, proximity of services, leisure and educational opportunities, walkability, etc.). To the extent that nonprofit community programs and projects funded by transfer fees contribute to these, property values are enhanced, even in a down market.</p> <p>Where, as in Serenbe, transfer fees are restricted to the community nonprofit, not the HOA, there results a clear and important delineation between the enrichment of civic life and the maintenance of civic infrastructure. The HOA is funded by an annual assessment that reflects the actual cost of maintenance, upkeep, and development of</p>

common physical assets. On the other hand, the community nonprofit encourages, facilitates, and implements programs that support the community's vision and core values. In Serenbe the value of these programs is defined by their contribution to a shared community vision that has been arrived at by civic consensus. Decisions about the use of transfer funds, within 501c3 limitations and consistent with Serenbe's shared community vision, are made by a volunteer board of directors representative of all the residents.

Many covenants are not intended for purely community purposes and, instead, create purely private continuous streams of income for select market participants either directly or through securitized investment vehicles.

The covenants governing the Serenbe community are very clear in defining the uses to which transfer fees can be put, and impose 501c3 restrictions on the distribution of net earnings:

SERENBE CODES, COVENANTS & RESTRICTIONS

Section 9.13 Transfer Fees Transfer fees shall be payable at the close of each transfer of the Lot as follows: one-half of the amount collected to the Conservation Trust and one-half of the amount collected to the Cultural Center. Such funds may be used by the Conservation Trust and the Cultural Center in their sole discretion and may include, without limitation, the cost of maintenance of Open Space and Conservation Areas, operating funds, community events and programs, and other community initiatives identified by the Conservation Trust or the Cultural Center...

Through an official change of corporate name in 2006, the "Cultural Center" is now the Serenbe Institute for Art, Culture & the Environment, Inc., which has also assumed the responsibilities of the Conservation Trust.

Transfer fees received by the Serenbe Institute are used in strict accordance with the provisions of its articles of incorporation and are provided with security and stewardship as civic rather than private assets:

Articles of Incorporation

Article V.

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and

to make payments and distributions in furtherance of the purposes set forth in Article 3 hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).

Given this response, we urge you to either 1) reject the proposed regulation or 2) narrow its scope to exempt fees to 501(c)(3) or 501(c)(4) organizations, conservancy organizations or homeowner associations.

FOR THE BOARD OF DIRECTORS

John E. Graham, Executive Director

SERENBE INSTITUTE FOR ART, CULTURE & THE ENVIRONMENT

9110 Selborne Lane, Suite 210

Chattahoochee Hills, GA 30268

770.463.4870 / www.serenbeinstitute.com



the serenbe institute