

From: Mike Miller [millermg@assembly.state.ny.us]
Sent: Tuesday, October 12, 2010 1:23 PM
To: !FHFA REG-COMMENTS
Subject: Guidance on Private Transfer Fee Covenants, (No. 2010-N-11)

To Whom It May Concern:

I write to voice my strong opposition to the proposed "Guidance on Transfer Fee Covenants." Well-intentioned though the guidance may be, I contend that it would severely destabilize the market.

The guidance suffers from the serious shortcoming of failing to take into account New York's Cooperative market. The goal of stabilizing the housing market cannot be met by hobbling Cooperative Boards' ability to provide the services that they are contractually bound to provide. Forcing a Cooperative into foreclosure is in nobody's best interests. The Cooperative is, by its nature, not a profit seeking enterprise. Decreasing the income from transfer fees will increase the likelihood of higher monthly fees to the shareholders. Many of these shareholders are on a fixed income, meaning that they are unlikely to be able to pay more per month.

The guidance is based on overgeneralizations. The assertion that fees may not be properly disclosed warrants further study, but punishes all property owners regardless of their contracts' transparency. The argument that "many covenants are not intended for purely community purposes" indicates a willful ignorance of those that do serve the community. The guidance's shortcomings are apparently rooted in the fact that:

"FHFA's draft Guidance does not distinguish between private transfer fee covenants which purport to render a benefit to the affected property and those which accrue value only to unrelated third parties."

The apparent premise of the argument in favor of the proposed guidance is the implication that private transfer fee covenants never actually benefit the affected property. I reject this premise as false and urge you to consider adjusting final guidance to reflect the eccentricities of the New York housing market.

I strongly encourage you to consider exempting cooperatives from the proposed guidance. The transfer fees, which are not hidden from the buyer, are needed to maintain basic services within a cooperative.
Thank you,

Michael G. Miller
Member of Assembly, New York State
38th District